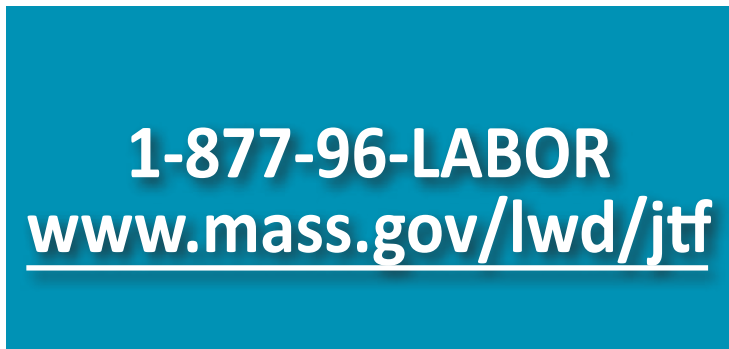


Commonwealth of Massachusetts

# Joint Enforcement Task Force

on the Underground Economy and Employee Misclassification





## Definitions of Abbreviations

ABCC:	Alcoholic Beverages Control Commission
AGO-FLD:	Office of the Attorney General - Fair Labor Division
COMM CORP:	Commonwealth Corporation
CUE:	Council on the Underground Economy
DAS:	Division of Apprentice Standards
DCAMM:	Division of Capital Asset Management and Maintenance
DIA:	Department of Industrial Accidents
DLS:	Department of Labor Standards
DOB:	Division of Banks
DOR:	Department of Revenue
DPH:	Department of Public Health
DPL:	Division of Professional Licensure
DPS:	Department of Public Safety
DUA:	Department of Unemployment Assistance
EOLWD:	Executive Office of Labor and Workforce Development
FSC:	Fair Share Contribution
IFB:	Insurance Fraud Bureau
JTF:	Joint Enforcement Task Force on the Underground Economy and Employee Misclassification
MCAD:	Massachusetts Commission Against Discrimination
MOBD:	Massachusetts Office of Business Development
MORI:	Massachusetts Office for Refugees and Immigrants
NLRB:	National Labor Relations Board
OSBE:	Office of Small Business and Entrepreneurship
OSD:	Operational Services Division
SOC:	Office of the Secretary of the Commonwealth
US DOL:	United States Department of Labor

# Table of Contents

Section 1:	Executive Summary	Page 1
Section 2:	Recovered Funds	Page 5
Section 3:	Noteworthy Accomplishments	Page 6
Section 4:	JTF: The Process	Page 13
Section 5:	Partner Agencies	Page 14
Section 6:	2014 Goals and Initiatives	Page 17
Appendix A:	Executive Order 499	Page 19
Appendix B:	Chapter 144 of the Acts of 2014 – Section Creating the Council on the Underground Economy	Page 22
Appendix C:	Member Agencies	Page 24
Appendix D:	Massachusetts and United States Department of Labor Common Interest Agreement	Page 32

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# Executive Summary

## JTF Results

During this reporting period, calendar year 2014, as a result of referrals and cooperative oversight, partner agencies recovered \$20,110,438 in wage restitution, state taxes, unemployment taxes, fines, and penalties.<sup>1</sup> Unless otherwise noted, all references to funds recovered represent recoveries through the cooperative efforts of the JTF and represent monies above and beyond what the member agencies collected through their ordinary enforcement efforts. In calendar year 2014, the JTF received 122 complaints through the JTF referral phone line and online referral service, along with hundreds of complaints made directly to partner agencies. The work of the JTF agencies resulted in over 21,000 compliance checks and investigations in the 12-month period.

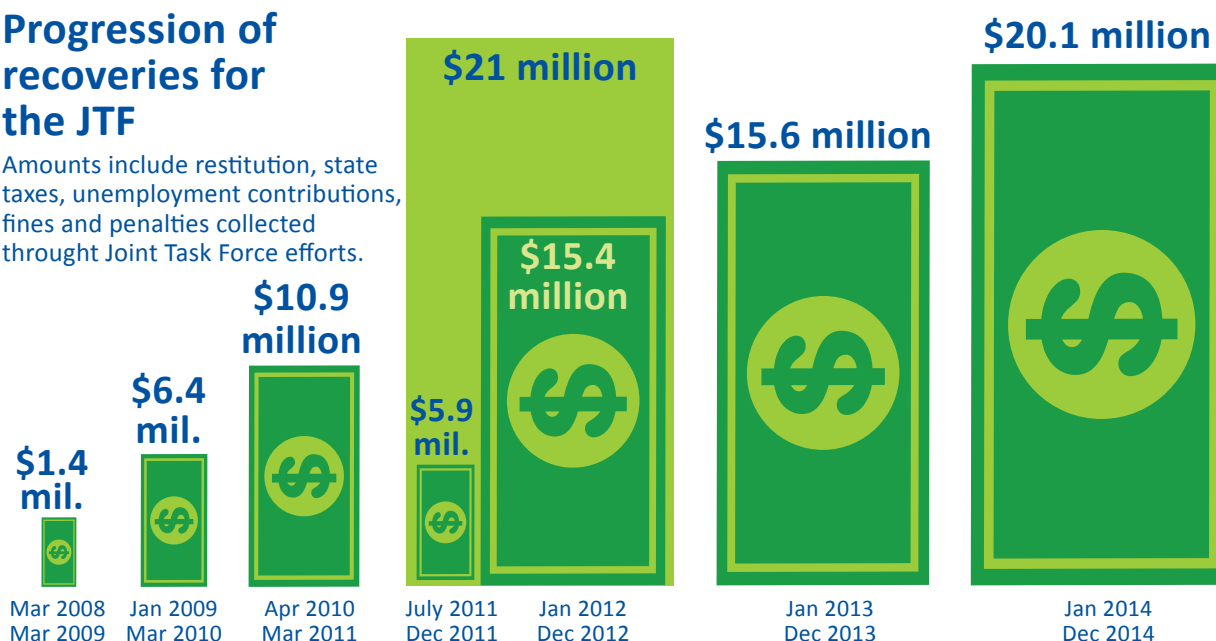
**2014 total recoveries: \$20,110,438**

**To-date recoveries: \$76,021,822**

For further details of each partner agencies' participation, please see the "Partner Agency Enforcement Activity" section on pages 14–17.

### Progression of recoveries for the JTF

Amounts include restitution, state taxes, unemployment contributions, fines and penalties collected through Joint Task Force efforts.



<sup>1</sup> Prior JTF reports represented activities as follows:

2009 Annual Report: March 2008-March 2009

2010 Annual Report: April 2009-March 2010

2011 Annual Report: April 2010-March 2011 and April 2011-June 2011

2012 Annual Report: July 2011-December 2011 and January 2012-December 2012

Beginning with the 2013 Annual Report, activities will be reported on a calendar year cycle

## 2014 Accomplishments

During 2014, the JTF had several noteworthy accomplishments:

- DUA's recoveries exceeded those of the previous year;
- Reaped over \$9.7 million of recovered funds from applicants seeking liquor licenses through licensing compliance checks between ABCC and DUA;
- DUA identified over 450 misclassified workers and \$5.5M in unreported wages as a result of JTF case referrals;
- Prevailing wage, false record-keeping, overtime, and false claims violations were revealed on public jobs;
- Drywall contractor was debarred for violating prevailing wage laws and apprentice standards;
- Local, state, and federal investigation found sub-standard living and working conditions at a farm in Western Massachusetts;
- Coordinated field investigations proved fruitful for the JTF;
- Codified the JTF to become a permanent fixture within state government.
- OSHA settlement agreement with a Massachusetts employer included a requirement for DLS training;
- Renewed US DOL Common Interest Agreement;
- Submitted findings and recommendations to the Office of the Attorney General in a report on labor trafficking in Massachusetts;
- Instituted cross-agency training for partner investigative agencies for the purpose of increasing efficiency and promoting best practices;

During 2015, the JTF looks forward to continued success by focusing on the following goals:

- Transitioning from the Joint Task Force to the Council on the Underground Economy
- Implementing objectives to achieve the Strategic Goals set by EOLWD to meet the initiative for a more transparent government under the MassResults plan;
- Creating education and outreach material for businesses and workers;
- Continuing and expanding cross-agency training opportunities;
- Expanding JTF partnerships both inside and outside the Executive Branch Agencies; and
- Enhancing multi-state and federal cooperation channels to maximize future engagements.

## The Issue in Massachusetts

The "underground economy" is a term that refers to those individuals and businesses that utilize schemes to conceal or misrepresent their employee population to avoid one or more of their employer responsibilities related to business laws and regulatory requirements. The underground economy encompasses other activities such as tax evasion, payroll fraud, "under-the-table" work, and wage theft. These activities may include but are not limited to: paying wages in cash, skimming some or all of the cash takings, not paying overtime, paying sub-minimum wages, charging individuals for transportation or supplies essential to the work, under-reporting employees, misclassifying employees as independent contractors, forcing employees to set up shell subcontractor entities, running a portion of normal business activities "off-the-books," and not registering a business to avoid tax obligations or to avoid obtaining the necessary licenses and insurance policies. Some unscrupulous employers methodically operate this way as part of their business model; other employers may be unaware of legal requirements prescribed by employment laws or feel the financial pressure or incentive to cut corners in their business operations. For those employers who knowingly break the laws, the lure of greater profits, lower costs, and less responsibility for workers often drives their decision-making.

## **Impact to Law-Abiding Businesses:**

By reducing the amount of money expended in a host of categories like wages, insurance, payroll taxes, licenses, employee benefits, materials and transportation, safety equipment, and safety conditions, these employers can gain a competitive advantage over companies that comply with business and tax laws and regulations. This results in unfair competition in the marketplace because law-abiding businesses must pay greater direct costs to stay in business and subsidize public benefits like health care, unemployment compensation, and workers' compensation for those companies and individuals who do not play by the rules.

The underground economy also compromises the legitimate business community and the Massachusetts economy. Legitimate businesses are economically disadvantaged when competing with other companies who are able to charge less for their goods or services because they are not law abiding. Further, legitimate businesses subsidize those entities that do not follow the labor, licensing, and tax laws, as their tax dollars underwrite the systems that provide benefits to eligible workers when there is no employer of record to charge.

## **Impact to the Workers:**

Individuals who perform work for businesses that do not comply with these laws are often and significantly negatively affected. These workers are often paid sub-minimum wage, receive no overtime, and may face barriers to receiving workers' compensation and health care coverage, or be entirely ineligible for unemployment insurance (UI) or social security benefits. Their working conditions may not meet safety requirements, often putting them in danger. Their value is diminished and their ability to economically sustain themselves and their families is put in peril. As a result, other employers and taxpayers are required to indirectly subsidize these liabilities, in the form of workers' compensation or UI coverage through employer funded trust funds, health care through publicly-subsidized care, and other state and federal subsidies.

## **Impact to the Commonwealth:**

Taxpayers are also unduly burdened as many workers who are misclassified, paid below minimum wage, or are without employer-provided benefits often utilize existing social safety nets. Finally, the sheer number of workers who now fall into the underground economy puts stress on the social safety net and the underlying societal norms that we share.

Massachusetts communities are also adversely impacted by the underground economy. Consumers drive the demand for labor, goods, and services, and may unwittingly be contributing to the underground economy through their buying choices.

Collectively, the costs of the underground economy are high. Operating outside the law allows businesses to have an unfair advantage by illegitimately lowering costs, therefore undercutting their competitors. This takes business away from law-abiding companies and their employees who are trying to make an honest living. This race-to-the bottom hurts the economy, legitimate businesses, and results in the erosion of the social fabric, economic stability, wage levels, and working conditions in the Commonwealth.



## History/Future

In March of 2008, Governor Deval Patrick signed Executive Order 499 which created the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF or Task Force), in order to coordinate the Commonwealth's efforts to eliminate employer fraud and employee misclassification. The Executive Order calls for the Task Force member agencies to address the underground economy cooperatively based on the following objectives:

- educate business owners and employees about applicable requirements;
- conduct joint, targeted investigations, and enforcement actions;
- protect the health, safety, wage, and benefit rights of workers;
- restore competitive equality for law-abiding businesses; and
- preserve taxpayer dollars and ensure proper payment of taxes.

On June 26th 2014, Governor Patrick signed into Law [Chapter 144](#) "An Act Restoring the Minimum Wage and Providing Unemployment Insurance Reforms." In addition to increasing the state's minimum wage, the law also codified the Joint Task Force on the Underground Economy (JTF), making it a permanent fixture under the Executive Office of Labor and Workforce Development as the Council on the Underground Economy. The law requires that government agencies work together in a concerted manner to uncover businesses that conceal or misrepresent their employee population to circumvent their employer responsibilities related to business laws and regulatory requirements. The JTF has commenced hundreds of investigations and collected millions of dollars in tax obligations, wage restitution, fines, and penalties from dishonest employers. With the enactment of this law, the agency partners that comprise the JTF will become a permanent compliance unit to combat the underground economy. The Council on the Underground Economy will continue Massachusetts' work to level the playing field by bringing businesses and individuals into compliance with applicable state labor, licensing, and tax laws. The law becomes effective March 24, 2015.



## Recovered Funds

	Period 6	Period 5	Period 4		Period 3	Period 2	Period 1
	January 2014 - December 2014	January 2013 - December 2013	January 2012 - December 2012	July 2011 - December 2011	April 2010 - June 2011	April 2009 - March 2010	March 2008 - March 2009
DUA UI taxes:	\$15,709,335	\$12,935,304	\$12,712,702	\$4,287,848	\$2,365,237	\$2,071,211	\$737,439
DUA FSC*:	\$60,878	\$236,738	\$276,439	\$16,830		\$188,788	\$239,742
DOR:	\$826,324	\$728,697	\$327,869	\$835,178	\$3,665,097	\$1,568,166	\$233,468
AGO:	\$2,314,002	\$405,000	\$593,398	\$272,567	\$3,033,148	\$788,690	\$200,425
IFB:	\$45,000		\$100,000				
DIA**:	\$1,140,300	\$1,333,337	\$1,433,371	\$537,450	\$2,167,311	\$1,872,694	\$24,750
DLS	\$1,300	\$3,650					
DPL	\$13,300	\$15,500					
Sub Total:			\$15,443,779	\$5,949,873			
Total:	\$20,110,438	\$15,658,226	\$21,393,652		\$10,930,933	\$6,489,549	\$1,439,024

The blank spaces above indicate data was not available or there was no number to report.

\* State health insurance legislation (Chapter 58 of the Acts of 2006) enacted in April of 2006 contains obligations for Massachusetts' employers who employ eleven (11) or more full-time equivalent (FTE) employees. Employers meeting this minimum employment threshold must file a Fair Share Contribution (FSC) report. Employers with eleven (11) or more FTE employees who do not make a "fair and reasonable contribution" to their employees' health insurance, as defined in Division of Health Care Finance and Policy (DHCFF) regulation (114.5 CMR 16.00), are required to pay a per-employee FSC to the Commonwealth Care Fund, payable to Department of Unemployment Assistance (DUA). Recoveries listed are payments made on delinquent accounts prior to the dissolution. This Program was repealed in July of 2013. Past due revenue for FSC was tracked by DUA through 6/27/2014. As of 07/01/14, EOLWD Finance took over the debts owed to FSC, and as of that date, it no longer is considered a JTF effort.)

\*\* DIA has a complementary enforcement operation, and certain DIA recovered funds reported in Years 2, 3 and 4 came as a result of that operation. The DIA Office of Investigations, which works with the JTF investigative team, is responsible for ensuring that all employers operating in the Commonwealth carry workers' compensation insurance at all times, pursuant to M.G.L. c. 152, §25A and §25C. Any employer that is found to be in violation of the statute is served with a stop work order (SWO). The SWO requires the business to close immediately upon service of the SWO and carries a fine of \$100 per day until the employer presents proof of a valid policy and pays the fine. The DIA has assigned investigators to cover every city and town in the Commonwealth. These investigators continually examine businesses and organizations of every size and description in order to guarantee that all employers in Massachusetts comply with the law.

# Noteworthy Accomplishments 2014

## DUA Calendar Year 2014 Recoveries Exceed Calendar Year 2013 Results

The revenue audit team at DUA, working in conjunction with the Alcohol Beverages Control Commission (ABCC), Division of Capital Asset Management and Maintenance (DCAMM), Department of Career Services (DCS), Department of Industrial Accidents (DIA), and Department of Labor Standards (DLS) through a JTF effort, recovered \$15,770,212 from employers in unpaid unemployment and fair share contributions in calendar year 2014. As part of their roles with the JTF, investigators and staff among these agencies conducted almost 21,000 cross-agency compliance checks. As a result of these checks, a number of businesses were found to be in violation of state law and were required to pay unemployment taxes owed in order to be considered for a state license or certification. Following is an accounting of DUA's 2014 recoveries for previously unpaid UI Trust Fund contributions working with each of the agencies listed below. Compliance checks performed by these entities for licenses, certifications, grants, etc., resulted in DUA collections of the following:

DUA Recoveries – Agency Compliance Checks		
January 2014 – December 2014		
Agency sending Compliance Check:	Amount Assessed	Number of Compliance Checks Completed
ABCC	\$3,422,935.04	3,990
ABCC (Renewals)	\$6,347,191.13	11,150
Lottery	\$32,951.65	272
COMM. CORP	\$1,270,160.75	2,362
DCAMM	\$1,043,766.27	1,442
DCS	\$140,839.16	107
DIA	\$8,024.42	110
DLS	\$1,860,649.84	1,490
EOLWD - JTF	\$1,582,816.00	353
DUA - Section 30 (training opportunities program)		81
FSC		
<b>Total Amount Assessed for Period 6:</b>	<b>\$15,709,334.62</b>	
<b>Total number of Compliance Checks Completed for Period 6:</b>	<b>21,357</b>	

## **ABCC Licensing Compliance Checks Reap over \$9.7M in Recovered Funds from Applicants Seeking Liquor Licenses**

The state's unemployment insurance department recovered \$9,770,126 during calendar year 2014 through efforts by the ABCC to hold initial and renewal applications for liquor licenses, until applicants paid outstanding unemployment taxes due to the Commonwealth. Through this interagency collaboration, ABCC has truly leveled the playing field for businesses with liquor licenses, ensuring these businesses pay their fair share and do not gain a competitive advantage by illegally reducing their expenses.

## **DUA Identifies over 450 Misclassified Workers and \$5.5 Million in Unreported Wages as a result of JTF Case Referrals**

DUA's revenue audit department reported that from JTF referrals alone, their office completed 50 audits. Twenty-five of the audits had findings, meaning that their office discovered new workers, the employer was under-reporting the number of employees or wages to DUA, and/or was misclassifying workers as independent contractors. The audits uncovered nearly 450 new workers and approximately \$5.5 million dollars in unreported wages.

Among DUA's findings in these audits:

- A mobile software technology company which misclassified 125 workers and under reported wages of over \$900,000.
- An landscaping company which failed to report any wages for 75 workers and under reported wages of over \$500,000.
- A brick and stone wholesaler and installer which misclassified wages for 48 workers and under reported wages of over \$300,000.

As a result of the audits, all three of the businesses engaged in swift action to achieve compliance. They began properly classifying employees and made payments for the unpaid Unemployment Insurance Trust Fund obligations they owed. These audits and subsequent compliance demonstrate that the collective authority of the JTF results in fruitful investigations, greater compliance, and may serve as a deterrent to misclassification by other companies when they see the costs of getting caught trying to cheat the system.

## **Prevailing Wage, False Record Keeping, Overtime, and False Claims Violations Revealed on Public Jobs**

In December 2014, the Office of the Attorney General's - Fair Labor Division (AGO-FLD) successfully settled a major case against an Ohio-based painting company which paid more than \$2 million in restitution to settle claims that it violated Massachusetts prevailing wage and overtime laws, and engaged in unfair business practices and violated the Massachusetts False Claims Act. The settlement resolved a lawsuit filed by AGO-FLD in May 2013 in Suffolk Superior Court, alleging that M&J Painting, Inc. (M&J) and its owner, Michael Kerpelis, intentionally failed to pay all wages to employees and knowingly submitted false payroll records in support of its claims for payment on a public construction contract. The settlement provides more than \$2 million in restitution to workers on the Braga Bridge painting project in Fall River.

In November 2008, M&J was selected from among six bidders to work on the Braga Bridge painting project, a \$13 million public construction project in Fall River and Somerset. In May 2011, the AGO-FLD received complaints alleging that M&J was not paying some of its employees for all of their hours on the project. Through its investigation the Attorney General's Office determined that from March 2010 to November 2011, M&J knew how many hours its employees were working, but failed to pay dozens of its workers for all hours worked. As a result, M&J failed to pay employees more than \$2 million in prevailing wages and overtime wages. The Attorney General's lawsuit alleged that during the course of the project, M&J submitted certified payroll records weekly asserting it was paying its employees the prevailing wage for all hours worked. The AGO-FLD investigation determined that M&J knowingly underreported the hours worked by dozens of its employees to give the appearance that it was in compliance with the wage and hour laws. The lawsuit alleged further that by misrepresenting how workers would be compensated, M&J engaged in a deceptive and unfair trade practice which violated the Commonwealth's Consumer Protection Act. M&J was also alleged to have knowingly submitted false certified payroll records to the awarding authority that grossly understated the total number of hours worked by M&J employees, in violation of the Massachusetts False Claims Act.

The Massachusetts prevailing wage and record-keeping laws apply to all construction work performed on public works projects in Massachusetts. The prevailing wage laws allow all contractors bidding on public works projects to enjoy a "level playing field" by standardizing the rate of pay the workers will earn. The record-keeping law allows state agencies to monitor the spending of taxpayer monies on public construction projects. The overtime law requires employers to pay employees covered by the law at time and one half their regular rate of pay for all hours of 40 hours per week. A company's failure to pay its employees the state prevailing wage for work performed at a public construction site, failure to pay overtime or to abide by the record keeping requirements can result in both civil and criminal penalties against the company and its owners. Passed in 2000, the False Claims Act authorizes the Attorney General to sue entities that submit false claims for payment to the state government or its political subdivisions on contracting and purchasing issues.

## **Drywall Contractor Debarred for Violating Prevailing Wage Laws and Apprentice Standards**

In December 2014, R&A Drywall and Vitale were ordered to pay more than \$200,000 in wage restitution and monetary penalties for violating the Massachusetts prevailing wage and record keeping laws. Both have been cited for failing to pay the proper prevailing wages and for intentionally failing to turn over payroll records to the Attorney General in its investigation of violations at the Quincy College Coddington Hall public works project ("Quincy Project"), and the Division of Capital Asset Management and Maintenance's Parcel 7 Fit Out-Renovation public works project ("Haymarket Station"), in Boston. R&A Drywall and Vitale have also been debarred for one year from the date of the citations by the Attorney General for failing to comply with those citations, meaning neither may submit bids to be hired to perform work on any public works projects in Massachusetts. The AGO-FLD initiated an investigation after receiving separate referrals from the JTF and the New England Regional Council of Carpenters alleging that R&A Drywall, LLC and its owner, Alan Vitale, of Goffstown, NH, were not properly paying workers who were performing carpentry work under the prevailing wage laws. The AGO-FLD investigation confirmed that R&A Drywall and Vitale underpaid employees as apprentices performing carpentry work while the company lacked a qualified apprentice program and underpaid other employees below the required hourly rate for carpentry work.

## **Local, State, and Federal Investigation of Sub-Standard Living and Working Conditions at a Deerfield Farm**

Two employees of the Bar-Way Farm in Deerfield, MA filed a complaint with Department of Career Services (DCS) alleging that the housing facility offered by the employer was plagued with numerous violations. DCS referred the matter to the Massachusetts Department of Public Health (DPH) and coordinated with the U.S. DOL's Wage and Hour Division (WHD) regarding violations of the minimum wage requirements. WHD completed their investigation and recovered approximately \$3,600.00 in back wages for workers.

In August 2013, DCS, DPH and the Town inspector completed an inspection of the housing facility located in South Deerfield and identified over 47 violations of the State Sanitary Code. The issues included lack of potable water, raw human sewage in the basement and the water well due to a backup of the sewage system, failure to provide a working toilet, lack of smoke and carbon monoxide detectors, serious infestation of bees and rodents, and issues with the roof, floors, windows, ceilings, and walls. During the investigation, the complainants continued to work for Bar-Way Farm and resided at a local motel paid for by the employer.

With the assistance of Community Legal Aid in Northampton, the two employees filed a lawsuit in Housing Court against the employer in October 2013. This lawsuit was withdrawn toward the end of the month because the two sides reached an agreement.

DCS and DPH continued to work with the employer and conducted a series of inspections to ensure that corrective action was fully implemented. Finally, in February 2014 the final inspection was conducted and the employer was granted a Certificate of Occupancy for the property in question.

## **Coordinated Field Investigations Prove Fruitful for the JTF**

In November 2014, the JTF conducted a coordinated field investigation at a large residential development construction site located in Worcester, Massachusetts as a result of a tip that contractors onsite were misclassifying employees as independent contractors. As a result of the investigation, the Department of Industrial Accidents issued three stop work orders. The Division of Professional (DPL) is filing a complaint against the Master Electrician on site and the electrical contractor, asking that he surrender his Master Electrician license as a result of apprentices working out of ratio. In addition, DPL is filing an administrative violation to the corporate office for having a wrong address on file. A case like this highlights the fact that often when an unscrupulous employer is cutting compliance corners with one law, it is likely to be violating other laws as well.

## **Codification of the Joint Task Force into the Council on the Underground Economy**

On June 26th 2014, Governor Deval Patrick signed into Law Chapter 144 "An Act Restoring the Minimum Wage and Providing Unemployment Insurance Reforms." In addition to increasing the state's minimum wage, the law also codified the Joint Task Force on the Underground Economy (JTF), making it a permanent fixture under the Executive Office of Labor and Workforce Development as the Council on the Underground Economy. The law ensures that government agencies work together in a concerted manner to uncover businesses that conceal or misrepresent their employee population to circumvent their employer responsibilities related to business laws and regulatory requirements. The JTF, established by the Governor in 2008 under Executive Order 499, has to date commenced hundreds of investigations and collected millions of dollars in tax obligations, wage restitution, fines,

and penalties from unscrupulous employers. With the enactment of this law, the agency partners that comprise the JTF will become a permanent compliance unit to combat the underground economy. The Council on the Underground Economy will continue Massachusetts' work to level the playing field by bringing businesses and individuals into compliance with applicable state labor, licensing and tax laws. The law becomes effective March 24, 2015.

## OSHA Settlement Agreement with Employer includes a Requirement for State Training on Temporary Worker Rights

OSHA has recognized that temporary workers are becoming more commonplace within today's various workplaces, and as a result of data showing that temporary workers have suffered a number of serious occupational injuries, they developed a Temporary Worker Initiative which focuses on compliance with safety and health requirements when temporary workers are employed at a host employer site. According to OSHA, "While the extent of responsibility under the law of staffing agencies and host employers is dependent on the specific facts of each case, staffing agencies and host employers are *jointly responsible* for maintaining a safe work environment for temporary workers—including, for example, ensuring that OSHA's training, hazard communication, and recordkeeping requirements are fulfilled."<sup>2</sup>

DLS has administrative and enforcement responsibility for a state law that requires licensure and registration of employment, placement, and staffing agencies. In January, 2013, a second law affecting the temporary staffing industry became effective: the Temporary Workers Right to Know Law (TWRTK) which requires staffing agencies to provide basic information about the job to which individuals are being assigned. The job information may be shared over the telephone but must be confirmed in writing to the worker before the end of the first pay period. During the Spring of 2014, OSHA, DLS, and the AGO-FLD teamed up to offer training sessions across the Commonwealth to educate client companies/host employers and owners of temporary staffing agencies and other interested parties of their responsibilities to their workers with regard to both OSHA and state law.

In a JTF collaboration, federal OSHA and state DLS coordinated a successful enforcement action after OSHA cited a framing contractor and a temporary staffing agency for not training temporary employees in safe work procedures. OSHA and the contractor came to a settlement agreement that required the employer to conduct general construction safety training for the temporary worker staffing agencies they utilized. In addition, OSHA required the contractor to participate in a joint training program conducted by DLS. The purpose of this training was to provide information about the requirements of the TWRTK Law to the client company, staffing agency, and the temporary workers. DLS will continue to develop this relationship with OSHA as they continue their temporary worker safety initiative, by being available to provide joint training sessions and to be a resource for businesses engaging temporary workers. DLS and OSHA have developed a joint referral process so that each agency can share inspection and investigation information with the other as each agency enforces their own laws and regulations. In 2014, DLS has investigated four cases where, in addition to finding TWRTK law violations, were made aware of unsafe working conditions by the temp workers. These cases were referred to OSHA for their investigation.

## Renewal of a Common Interest Agreement with US DOL

In November 2014, the Commonwealth of Massachusetts, through the Executive Office of Labor and Workforce Development and the US DOL renewed a 3-year Common Interest Agreement. The initiative commits the agencies within the US DOL to work with the agencies of the JTF which, since its inception, has collected nearly \$76 million from holding unscrupulous businesses accountable for fraudulent activities. The agreement was renewed on November 17th 2014.

<sup>2</sup> [https://www.osha.gov/temp\\_workers/index.html](https://www.osha.gov/temp_workers/index.html)



In making the announcement, US Labor Secretary Thomas Perez commented, “Combating worker misclassification is one of several important strategies the U.S. Department of Labor is using to promote shared prosperity and to help ensure that our economy works for everyone, which is why we are excited to renew this agreement with the Massachusetts Department of Labor and Workforce Development. The renewal of this agreement will allow us to continue to coordinate and ensure compliance with both federal and state laws alike.”

## **JTF Takes a Lead Role in Raising Awareness of Labor Trafficking**

On November 21, 2011, Governor Deval Patrick signed into law House Bill 3808, An Act Relative to the Commercial Exploitation of People. The law took effect February 19, 2012. The Law established new crimes of human trafficking for sexual servitude and forced labor, enticement of a child by means of electronic communication, and organ trafficking; increased penalties for existing crimes; instituted requirements for reporting of trafficking victims by mandated reporters; provided a safe harbor provision for child victims; established a trust fund for victims of trafficking to which forfeited assets from trafficking offenses will be deposited; and mandated an inter-agency task force on human trafficking.

The Massachusetts Interagency Human Trafficking Policy Task Force (Task Force) chaired by Massachusetts Attorney General Martha Coakley and consisting of nineteen members representing government, law enforcement, academia, service providers, legal services, and advocacy, convened on February 29, 2012. Chapter 178 of the Acts of 2011 directed the Task Force to submit a report of its findings and recommendations to the clerks of the senate and house of representatives who shall forward the report to the chairs of the joint committee on the judiciary not later than 18 months after the effective date of this act. The Task Force shall determine if subsequent reports are necessary in order to properly address human trafficking.

On August 19, 2013, Attorney General Coakley released a report of the findings and recommendations of the Task Force. Recommendations were made according to broad subject areas from sub-committees which focused on particular aspects of human trafficking:

- Victim Services
- Demand Reduction
- Data Collection and Information Sharing
- Education and Training
- Public Awareness

The report provided a road map for Massachusetts to address human trafficking by identifying achievable goals that would be effective in combatting the scourge of trafficking. One of the findings from the Task Force was that a group should specifically be formed to study the issue of labor trafficking and consider making recommendations to the Task Force Chair for potential inclusion as an addendum to the Task Force report.

On January 16, 2014, the Labor Trafficking Sub-Committee of the Human Trafficking Policy Task Force was formed and met seven times since its formation. Members of the sub-committee included:

- Deb Bercovitch, Chief of the Human Trafficking Unit, Office of the Attorney General
- Drew Cahill, Assistant Attorney General, Office of the Attorney General
- Shawn Croke, Investigator, Division of Professional Licensure
- Julie Dahlstrom, Managing Attorney, Ascentria Care Alliance (formerly Lutheran Social Services of New England) and the Boston University School of Law Human Trafficking Clinic



## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

### Annual Report 2014

- Lydia Edwards, Equal Justice Works Fellow, Greater Boston Legal Services
- Kristen Gordon, Director of Human Trafficking Policy, Programming, and Education, Office of the Attorney General
- Diego Low, Executive Director, Metrowest Worker Center
- Mirna Montano, Organizer, Massachusetts Coalition for Occupational Safety and Health
- Audrey Richardson, Senior Attorney, Greater Boston Legal Services
- Heather Rowe (Chair), Director, Department of Labor Standards, Joint Task Force on the Underground Economy and Employee Misclassification
- Georgia Simpson-May, Director, Office of Health Equity, Department of Public Health

Administrative and research assistance for the committee was provided by:

- Melissa Butts, Program Coordinator, Joint Task Force on the Underground Economy and Employee Misclassification
- Christina Wescott, Management Analyst, Department of Labor Standards

The committee members engaged nationally-recognized experts throughout the year to assist them in understanding the different aspects of labor trafficking. Ultimately, the committee made over 25 recommendations for consideration by the Attorney General in a report filed in October 2014, to address labor trafficking in Massachusetts.

## Research Study on Employee Misclassification and the Underground Economy in Massachusetts

A research study to review the current state of the underground economy in Massachusetts got underway during 2013, through a partnership among DOR, DUA, and the JTF. The study's purpose was to estimate the frequency, scale, and consequences of misclassification and the underground economy on the Commonwealth. Revenue Solutions, Inc. (RSI) was selected by DOR as a partner of the JTF, to undertake the analysis and write a report of their findings. The RSI report provides a detailed description of the specific aims and analyses they undertook. The JTF created a Technical Advisory Board (TAB) which consisted of David Weil, Ph.D., and James Rebitzer, Ph.D., who, combined, have over 30 years of experience in administering, developing, performing, publishing, and presenting research related to the economy and workplace issues, to work with the RSI team during their analysis. Because of the confidentiality of the data, the TAB could not and did not participate in the creation of the data set or the analysis of the data. It did provide, through a series of meetings with the JTF and RSI throughout the study period, responses and suggestions regarding the analysis. The TAB was also charged with writing an independent assessment of the study findings based on RSI's final report to the JTF. The TAB delivered their final report to the JTF on March 31, 2014.

The study resulted in a description of the current degree and volume of contracting in the Massachusetts economy, including an analysis of the fiscal impact caused by employee misclassification on state tax revenues and the unemployment insurance tax system. The key findings of the report were:

- The report estimates an average annual loss of unemployment insurance taxes at \$87M; a total of close to \$950M over the study period, due to misclassification or non-reporting of employees.
- In 2001, contractors associated with a singular contract relationship accounted for 66.3% of all contracting relationships, whereas in 2010, this ratio had grown to 82%. The TAB reports that this suggests a change in the nature of contracting evidenced during the study period.

- Businesses that misclassify pay workers about 14% less than those that do not misclassify. This is true for both their contractors and their employees.
- Businesses using contractors exhibited misclassification and/or underreporting of wages at rates TWICE that of other audited establishments not using contractors.

The JTF hopes to engage in talks with DOR about how to make the data warehouse available to the robust research and academic community here in Massachusetts, because the study project assembled a data warehouse of eleven years' worth of data of contracting in Massachusetts—something which has never been compiled before.

## **Cross-Agency Training**

The Task Force partner agencies remain committed to cross agency education and training to ensure that our investigative agencies are familiar with each other's processes and enforcement authority. In 2014, DOR continued to offer its employee training and development programs to the Joint Task Force investigative team when training slots were available. In addition, DOR University was launched which will provide e-learning tools for JTF members. More courses will be added in the future that will be beneficial to JTF member agencies. This very successful partnership allowed JTF partners to take courses that may not have otherwise been available to them.

In addition to DOR training, DLS offered OSHA 10 (construction) training to JTF partner agencies and their investigators. As a result, many investigators from our partner agencies are OSHA 10 certified which will assist them in identifying and reporting workplace hazards while on an inspection.

Cross-training and awareness initiatives assist JTF agencies in operating in an efficient and coordinated manner by providing opportunities for agencies to identify potential cooperative methods. Cross-agency training helps to increase investigators' awareness of the requirements placed on employers by their sister agencies and encourage inter-agency referrals.

## **JTF: The Process**

### **Reporting Suspected Cases of Fraud and Misclassification to the Task Force**

The website of the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification, [www.mass.gov/lwd/jtf](http://www.mass.gov/lwd/jtf), provides information about the underground economy and how to take action when it comes to getting help with suspected cases of workplace fraud and employee misclassification. The website provides the public with a form that can be completed and submitted to the JTF for suspected cases of fraud and misclassification. The JTF anonymous referral telephone line, 1-877-96-LABOR, provides another avenue for individuals to provide information on the underground economy to JTF partner agencies.

The existence of the JTF makes reporting suspect business practices easier for the public. To report employer fraud, an individual may have previously needed to call up to 10 different tip lines. With the JTF, an individual can report an employer paying wages in cash, safety concerns, wage and hour violations, insurance premium avoidance, and non-licensure, all in one place. The information is then dispatched to the agency that handles the non-compliance allegation for further investigation.

## JTF Referral Investigations

JTF partner agencies that have enforcement authority over underground economy matters have tracked their activities with regard to JTF referrals and resulting investigations. During 2014, JTF reviewed referrals and opened agency investigations when appropriate. These investigations, conducted on top of the agencies' independent investigatory and enforcement work, ranged from single-agency audits to multi-agency actions, with results ranging from stop work orders issued, to owed monies recovered, to prosecution of persons for egregious infractions, to no violations found. It should be noted that since white-collar crime investigations can require months of investigation and/or litigation, the results of many investigations may not be available until long after referrals are made. Those complaints that were not investigated either lacked sufficient information for follow-up or lacked relevance to the mission of the JTF.

In addition to the monetary recoveries, the JTF has opened the doors for agency collaboration that, in many ways, is unprecedented. This has allowed agencies to have quality tips provided, share resources, and reduce duplicative efforts. While each participating agency has the ability to recoup revenue on its own, our collective efforts provide greater enforcement and compliance; yields significantly more in revenue for the Commonwealth; and delivers better outcomes for both employees and employers in the state. The JTF continues to successfully work together to confront fraud and abuse among employers, to provide an equal playing field for businesses to compete, and to protect workers.

## JTF Compliance Checks

JTF partner agencies' collaboration goes beyond the coordination of JTF referrals and investigations. The JTF has also facilitated the implementation of numerous cooperative oversight processes, resulting in over 21,000 compliance checks amongst agencies in 2014, to assist in enforcement against employers violating Massachusetts tax, employment, and licensing laws. A compliance check occurs when a single JTF partner agency reviewing an employer's conduct for purposes of an ongoing investigation, license application, license renewal, procurement certification, credential, grant, or other benefit, inquires as to whether other JTF partner agencies have noncompliance matters relative to that particular employer. Cooperative oversight in the form of JTF compliance checks has proven to be an important tool for many of the Commonwealth's agencies.

## Partner Agency Enforcement Activity

**Alcoholic Beverages Control Commission (ABCC)**, which investigates applications for liquor licenses, prosecutes violations of pertinent statutes and regulations, and adjudicates disputes among members of the industry, participated in the recovery of just under \$9 million for the state's UI Trust Fund, and assisted JTF agencies in reviewing investigations relative to employers maintaining or applying for a liquor license in the Commonwealth.

**Attorney General's Office - Fair Labor Division (AGO-FLD)** reviewed all relevant JTF complaints for potential violations of minimum wage and child labor laws; nonpayment of wages, prevailing wage violations; misclassification of employees; overtime pay violations; payroll record keeping and temp worker right-to-know violations; workers' compensation, and unemployment insurance fraud. The AGO-FLD undertook numerous investigations that originated from JTF referrals and employee misclassification complaints, yielding both civil and criminal enforcement actions. Included amongst these efforts, the AGO-FLD issued 45 civil citations with restitution and penalty orders totaling over \$333,000; 28 of the 45 citations came as a result of referrals from the JTF. Including restitution and penalties paid as a result of settlements, the AGO-FLD returned well over \$2M to workers and the state in JTF-related matters.

## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

### Annual Report 2014

**Department of Industrial Accidents (DIA)** reviewed all relevant complaints received by the JTF and checked each referred employer for workers' compensation insurance coverage. Based upon the review and investigation of all JTF referrals in calendar year 2014, DIA issued 73 stop work orders for lack of workers' compensation coverage. As a result, 131 workers were newly covered by workers' compensation policies and DIA received \$36,950 in fines. In its complementary enforcement actions by DIA investigators during calendar year 2014, DIA conducted 95,478 compliance checks, 5,998 investigations, and issued 2,200 stop work orders for lack of workers' compensation insurance, which resulted in \$1,140,300 in fines and 5711 workers brought under insurance coverage. Had any of those uncovered workers sustained an accident on the job, they would have turned to the state's Workers' Compensation Insurance Trust Fund to cover their weekly benefits and medical expenses; this represents an unfair dynamic for businesses that are dutifully paying their insurance premiums and operate in compliance with the state's workers' compensation laws.

**Department of Labor Standards (DLS)** assisted DUA in recovering just under \$1,860,650 in unpaid unemployment insurance obligations through a joint operation during 2014. DLS also investigated complaints referred by the JTF alleging misconduct on the part of employment or temporary staffing agencies, temporary workers right to know law violations, asbestos and lead paint related licensing, and apprentice training programs. DLS investigated 11 complaints referred by the JTF alleging misconduct on the part of employment or temporary staffing agencies, temporary workers right to know law violations, asbestos and lead paint related licensing, and apprentice training programs.

The DLS investigated five referrals where complainants alleged violations by employment, placement, or staffing agencies and the Temporary Workers Right To Know law. Of the five, one company was found to be operating without the proper license or registration, and was issued a written warning and ordered to apply for its credential. After conducting investigations, no further action was warranted on the remaining four referrals.

DLS also investigated five possible lead-safe renovation/construction complaints resulting from JTF referrals in 2014. One painting contractor was found working at a job site and operating without the required Lead-safe Renovation license. Once cited, the contractor immediately applied for his license with the department. DLS investigated another complaint regarding a roofing contractor that was not using proper fall protection. DLS found four workers at the site and contacted OSHA, who later arrived and performed a site visit while work was still being done. DLS inspected three other sites, but no work was occurring at the time of the inspection. One of these complaints was against a contractor that had been cited in 2011 by DLS. This information was shared by DLS with all of the JTF investigative agencies.

DLS participated in two coordinated field investigations where DLS checked for construction/trench safety and workers being provided by temporary staffing agencies. In both operations, there were no violations observed. DLS provided enforcement information regarding an asbestos contractor that was looking to become DCAMM certified. The contractor had been cited by DLS in 2012 but had defaulted on his fine. In order for the contractor to become DCAMM certified, he had to pay his fine to DLS and pay his outstanding unemployment taxes. In another situation, DLS referred an unlicensed painting contractor who defaulted on a civil penalty to the JTF investigative team so that their field teams could be on the lookout for the contractor engaged in active work. These are prime examples of the kind of inter-agency coordination that the JTF fosters which only serves to level the playing field for law-abiding businesses.

**Department of Revenue (DOR)** reviewed and closed 120 cases that were referred from the JTF that resulted in the assessment \$826,324 of additional tax, interest, and penalties in 2014. There are also 54 JTF cases totaling \$300,000 - \$500,000 still in progress that should be assessed in calendar year 2015. The DOR continues to identify and audit businesses that have misclassified workers and have underreported/not filed employment taxes.

## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification Annual Report 2014

**Department of Unemployment Assistance (DUA)** reviewed all relevant JTF referrals looking for Unemployment Insurance (UI) Trust Fund and Fair Share Contribution (FSC) violations such as failure to file, underreporting, failure to register, and/or failure to pay in full. DUA recovered \$15,770,212 in unpaid employer contributions to the Unemployment Insurance Trust Fund and FSC through referrals and compliance cross-checks with the Alcoholic Beverages Control Commission (ABCC), Commonwealth Corporation (COMM. CORP), Department of Labor Standards (DLS), Division of Capital Asset Management and Maintenance (DCAMM), Department of Industrial Accidents (DIA), and Executive Office of Labor and Workforce Development (EOLWD).

**Division of Capital Asset Management and Maintenance (DCAMM)**, in 2014, assisted the Commonwealth in recovering \$1,043,766 from applicants for DCAMM contractor certification found not to be in compliance with DUA at the time of application. This was accomplished by sending notices to applicants that they must settle their DUA obligation before they can be eligible for DCAMM certification to bid on Chapter 149 public building construction contracts. DCAMM halts the certification process for any contractors that have not brought themselves into compliance with DUA obligations and denies these applications from certification. The increase in 2014 in the number of contractors brought into DUA compliance in part reflects DCAMM's attention to assuring that non-Massachusetts contractors fulfill their legal obligation of registering with DUA.

During 2014, DCAMM denied certification to three applicants and, further, administratively closed 39 application files without issuance of requested certificates for various reasons, including, for example, the applicant's failure to resolve outstanding DUA liabilities, excessive prevailing wage violations, poor performance and supervision, non-compliance, and mistreatment of sub-contractors. This record of achievement is attributable to DCAMM's insistence, as a condition to certification, that applicants strictly comply with internal certification requirements, and to interagency enforcement with DUA and other JTF-participating agencies. DCAMM's practice of requiring that applications for renewal of certification be submitted at least three months prior to expiration of the applicant's current certificate also provides ample time for assuring such compliance and/or correction of non-compliance.

Additionally, each contractor's application is checked against DCAMM's internal JTF case-tracking database, and on a weekly basis, a list of all contractor applicants received is sent to all JTF partner agencies to inquire whether any other agency is working on any matters relating to the applicant.

**Division of Professional Licensure (DPL)** The Division of Professional Licensure (DPL) investigated all JTF referrals involving unlicensed individuals or businesses performing services that require professional licensure by the Commonwealth. In conjunction with DIA, DPL investigators also inspected 10 massage therapy establishments in Acton, Barnstable, Boston, and Hyannis in 2014. As a result of the inspections, numerous individuals working at the targeted establishments were cited for the unlicensed practice of massage therapy or the operation of an unlicensed establishment, resulting in the issuance of \$13,500 in fines. DPL also investigated several licensed electricians in Worcester, for failure to properly supervise unlicensed apprentices working under their supervision.

**Insurance Fraud Bureau (IFB)** Of the referrals received in 2014 from the JTF that had allegations of Insurance Fraud, 25 were accepted. In 2014, the IFB in collaboration with multiple state and federal investigative and prosecutorial agencies investigated 11 workers' compensation premium evasion cases that had evidence of hidden payroll schemes. One such case involves Elburke Lamson, who was indicted on two counts of workers' compensation fraud and two counts of larceny over \$250. The defendant was operating as the manager of Legal Pro Temps, Inc., a now defunct staffing company, located in Dorchester. In an effort to evade high insurance premiums, the defendant allegedly underreported or failed to report his payroll to his insurance company. Legal Pro Temps, Inc., allegedly operated with a payroll totaling more than \$2 million billed through its vendors, but only reported a payroll totaling more than \$184,000. As a result of this premium avoidance scheme, Lamson underpaid his workers' compensation insurer more than \$45,000 in premium payments.

# Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

## Annual Report 2014

In the past five years, the Insurance Fraud Bureau of Massachusetts has continued to forge successful working relationships within the insurance industry as well as with local, state, and federal agencies. The IFB has continued to expand our presence throughout the state. IFB staff has been drawn on to speak at the local, state, and national level on insurance fraud related topics. Our focus on prevention and deterrence of insurance fraud has led us to provide numerous educational programs available to insurance, law enforcement and other professional organizations.

Over the past five years, we have seen a growing trend involving temporary employment agencies and related businesses. We have tailored industry training to assist auditors and agents on how to recognize hidden payroll and other premium evasion schemes. Our goal continues to be meaningful sentences; in recent years, we have seen significant prison sentences in workers' compensation cases ordered, ranging from 1 to 10 years in federal prison. The IFB continues to have success in criminal investigations, referring over 1,200 cases for prosecution between 2009 and 2014; the number increasing with each year.

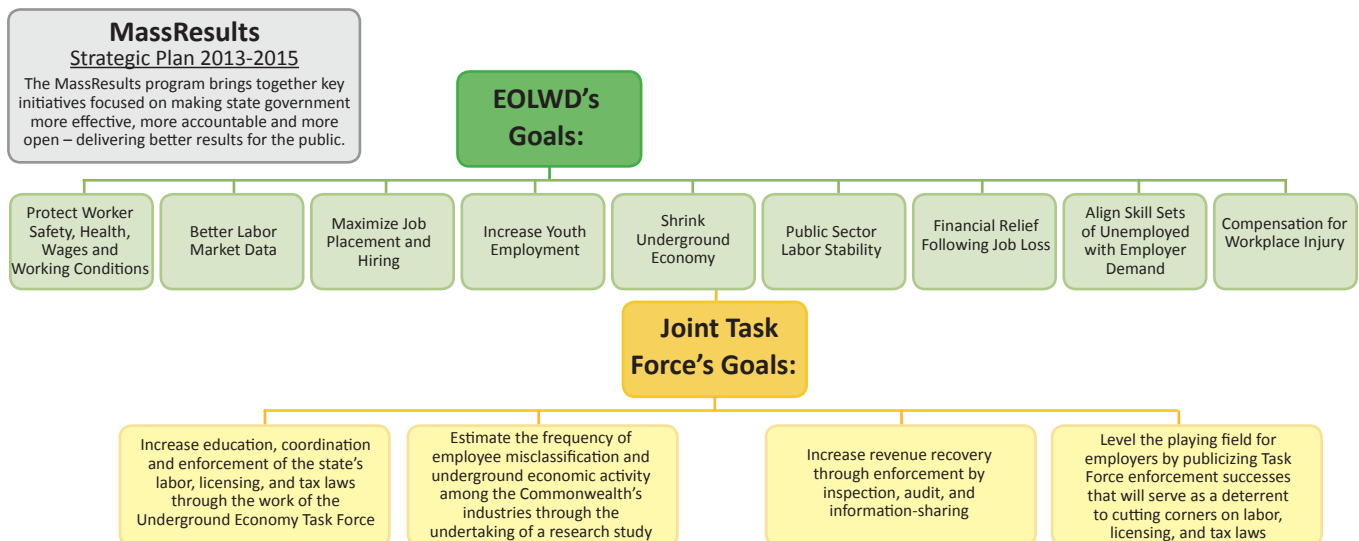
## 2014 Goals and Initiatives

Now in its seventh year, the JTF remains focused on increasing the volume and impact of cross-agency enforcement. This will be accomplished by building on the existing processes by which partner agencies conduct cooperative investigations. These efforts raise awareness in the general public, the business community, and within government, about the work of the JTF agencies to combat the underground economy and the responsibilities of employers in the Commonwealth. There are a number of key initiatives being undertaken by the JTF in furtherance of these goals.

### Strategic Goals

The JTF continues to work toward furtherance of its goals:

- Increasing education, coordination and enforcement of the state's labor, licensing, and tax laws through the work of the Underground Economy Task Force;
- Increasing revenue recovery through enforcement by inspection, audit, and information-sharing;
- Leveling the playing field for employers by publicizing JTF enforcement successes that will serve as a deterrent to cutting corners on labor, licensing, and tax laws;





## Education and Outreach

The JTF will continue an education and outreach plan that involves the following multi-faceted approach:

1. Create educational material for workers and employers to bring awareness to the ongoing issues of the underground economy. Worker cards will have brief descriptions of signs of underground economy activity and how to report it. Business outreach will include a brochure focused on educating business owners of the adverse effects of contributing to the underground economy or misclassifying employees. The material will also have contact information to report fraudulent work practices.
2. Utilize its statewide advisory council to assist in educating workers and businesses, identify potential problem areas, and develop policy recommendations around specific legislative proposals.
3. Continue to enhance its web page with the goal of improving access to information about the underground economy and the work of the Joint Task Force.
4. Accept invitations from stakeholders to share information about the JTF, discuss best practices, opportunities, and challenges faced by employers, employees, regulators, and advocates.

## Cross-Agency Training

The JTF partner agencies remain committed to a cross-agency education and training plan to ensure that our investigative agencies are familiar with various processes and enforcement authority. Cross-training ensures efficiency, coordination and encourages interagency referrals. During 2015, the JTF will make training opportunities available for partner agency investigators.

## Expanding Additional Partnerships

The JTF has seen tremendous success as a result of compliance checks among our partner agencies. Monetary recoveries have increased dramatically as a result of cross-agency communication to increase compliance with multiple state agencies' requirements. This coordinated review helps to level the playing field for businesses as they are being required to pay all outstanding UI Trust Fund contributions and have a valid workers' compensation policy (if one is required) before being granted authorization to lawfully conduct a regulated activity. If a business chooses not to become compliant, it could potentially lose a license or forgo opportunities to bid on a state-funded project. Bringing additional partners into the JTF could mean additional revenue recovery to the Commonwealth and more businesses coming out of the shadows. Moreover, additional partners may be helpful to enforcement, as it is not uncommon for an unscrupulous business to have multiple compliance issues with multiple government agencies. The more avenues of enforcement available, the more likely we may be to curb illegal behaviors.

## Multi-State and Federal Cooperation

Many JTF agencies and partners, such as DUA, DIA, DLS, DOR, AGO-FLD, and the IFB have strong, working relationships with federal authorities. The JTF is focused on building on these existing channels of cooperation and maximizing any potential assistance that can be provided in addressing the underground economy in Massachusetts. Also, the JTF has developed relationships with its counterparts in other states to share new ideas involving methods of cross-agency enforcement, and to open potential avenues for multi-state enforcement initiatives.



# Appendix A: Executive Order 499

By His Excellency  
DEVAL L. PATRICK  
GOVERNOR

## EXECUTIVE ORDER NO. 499

### Establishing a Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

WHEREAS, the health of the Commonwealth's economy, its workers, and its businesses is harmed by the existence of an illegal underground economy in which individuals and businesses conceal their activities from government licensing, regulatory, and taxing authorities;

WHEREAS, individuals and businesses that operate in the underground economy do so in violation of labor, employment, tax, insurance and occupational safety laws, by failing to pay required wages, carry workers' compensation insurance, comply with health, safety and licensing requirements, or pay income taxes and payroll taxes that fund unemployment insurance, disability insurance, and Medicare and Social Security benefits;

WHEREAS, certain businesses also improperly classify their employees as "independent contractors" (referred to as "employee misclassification") and hire undocumented workers to avoid compliance with labor, employment, tax, insurance and regulatory requirements;

WHEREAS, the underground economy and, in particular, the practice of employee misclassification: (1) exploits vulnerable workers and deprives them of legal benefits and protections; (2) gives unlawful businesses an unfair competitive advantage over lawful businesses by illegally driving down violators' taxes, wages, and other overhead costs; (3) defrauds the government of substantial tax revenues; and (4) harms consumers who suffer at the hands of unlicensed businesses that fail to maintain minimum levels of skills and knowledge;

WHEREAS, a recent study based on audits of Massachusetts unemployment records for construction employers between 2002 and 2005 found that up to 14% of the employees covered by the audits were estimated to have been misclassified by employers;

WHEREAS, efforts to combat the underground economy and employee misclassification historically have been divided among various agencies, diminishing the timeliness, efficiency and effectiveness of such efforts; and

WHEREAS, the creation of joint task forces has proven to be an effective mechanism for enhancing interagency cooperation, information sharing, and the prosecution of violators;

NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, § 1, Art. I, do hereby order as follows:

Section 1. There is hereby established the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (the "Task Force").

## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

### Annual Report 2014

Section 2. The Task Force shall consist of the following members or their designees: the Director of Labor, the Commissioner of Revenue, the Commissioner of the Department of Industrial Accidents, the Chief of the Attorney General's Fair Labor Division, the Commissioner of the Division of Occupational Safety, the Commissioner of the Department of Public Safety, the Director of the Division of Professional Licensure, the Director of Apprenticeship Training and the Director of the Department of Unemployment Assistance. The Director of Labor shall chair the Task Force.

Section 3. The Task Force shall coordinate joint efforts to combat the underground economy and employee misclassification, including efforts to: (a) foster compliance with the law by educating business owners and employees about applicable requirements; (b) conduct joint, targeted investigations and enforcement actions against violators; (c) protect the health, safety and benefit rights of workers; and (d) restore competitive equality for law-abiding businesses.

In fulfilling its mission, the Task Force shall:

- a. Facilitate timely information sharing between and among Task Force members, including through the establishment of protocols by which participating agencies will advise or refer to other agencies matters of potential investigative interest;
- b. Identify those industries and sectors where the underground economy and employee misclassification are most prevalent and target Task Force members' investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;
- c. Assess existing investigative and enforcement methods, both in Massachusetts and in other jurisdictions, and develop and recommend strategies to improve those methods;
- d. Encourage businesses and individuals to identify violators by soliciting information from the public, facilitating the filing of complaints, and enhancing the available mechanisms by which workers can report suspected violations;
- e. Solicit the cooperation and participation of district attorneys and other relevant enforcement agencies, including the Insurance Fraud Bureau, and establish procedures for referring cases to prosecuting authorities as appropriate;
- f. Work cooperatively with employers, labor, and community groups to diminish the size of the underground economy and reduce the number of employee misclassifications by, among other means, disseminating educational materials regarding the applicable laws, including the legal distinctions between independent contractors and employees, and increasing public awareness of the harm caused by the underground economy and employee misclassification;
- g. Work cooperatively with federal, commonwealth, and local social services agencies to provide assistance to vulnerable populations that have been exploited by the underground economy and employee misclassification, including but not limited to immigrant workers;
- h. Identify potential regulatory or statutory changes that would strengthen enforcement efforts, including any changes needed to resolve existing legal ambiguities or inconsistencies, as well as potential legal procedures for facilitating individual enforcement efforts; and
- i. Consult with representatives of business and organized labor, members of the General Court, community groups and other agencies concerning the activities of the Task Force and its members and ways of

## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

### Annual Report 2014

improving its effectiveness, including consideration of whether to establish an advisory panel under the secretary of labor and workforce development.

Section 4. The Task Force shall transmit an annual report to the Governor summarizing the Task Force's activities during the preceding year. The report shall, without limitation: (a) describe the Task Force's efforts and accomplishments during the year; (b) identify any administrative or legal barriers impeding the more effective operation of the Task Force, including any barriers to information sharing or joint action; (c) propose, after consultation with representatives of business and organized labor, members of the legislature and other agencies, appropriate administrative, legislative, or regulatory changes to strengthen the Task Force's operations and enforcement efforts and reduce or eliminate any barriers to those efforts; and (d) identify successful preventative mechanisms for reducing the extent of the underground economy and employee misclassification, thereby reducing the need for greater enforcement. The Task Force also shall take appropriate steps to publicize its activities.

Section 5. To the extent permitted by law, every agency within the Executive Branch shall make all reasonable efforts to cooperate with the Task Force and to furnish such information and assistance as the Task Force reasonably deems necessary to accomplish its purposes.

Section 6. Nothing in this Executive Order shall be construed to require action inconsistent with any applicable state or federal law.

Section 7. This Executive Order shall continue in effect until amended, superseded, or revoked by subsequent Executive Order.

Given at the Executive Chamber in Boston this 12th day of March in the year of our Lord two thousand and eight and of the Independence of the United States, two hundred and thirty-two.

DEVAL L. PATRICK  
GOVERNOR  
Commonwealth of Massachusetts

WILLIAM FRANCIS GALVIN  
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

# Appendix B: Chapter 144 of the Acts of 2014 – Section Creating the Council on the Underground Economy

## Chapter 144 of the Acts of 2014 AN ACT RESTORING THE MINIMUM WAGE AND PROVIDING UNEMPLOYMENT INSURANCE REFORMS

### Section creating the Council on the Underground Economy

SECTION 23. Said [chapter 23](#) is hereby further amended by adding the following section:-

Section 25. (a) There is hereby established a council on the underground economy. The council shall coordinate joint efforts to combat the underground economy and employee misclassification, including efforts to: (1) foster compliance with the law by educating business owners and employees about applicable requirements; (2) conduct targeted investigations and enforcement actions against violators; (3) protect the health, safety and benefit rights of workers; and (4) restore competitive equality for law-abiding businesses. For the purposes of this section, the term “underground economy” shall mean any individual or business that deals in cash or uses other means to conceal its true tax liability from government licensing, regulatory and taxing agencies, including, but not limited to, tax evasion or fraud, misclassification of employees, wage theft or the unreported payment of wages.

(b) The council shall consist of 17 members including: the secretary of labor and workforce development, or a designee, who shall serve as the chair; the director of the department of unemployment assistance, or a designee; the director of the department of industrial accidents, or a designee; the director of labor standards, or a designee; the commissioner of revenue, or a designee; the chief of the attorney general’s fair labor division, or a designee; the commissioner of public safety, or a designee; the director of professional licensure, or a designee; the executive director of the insurance fraud bureau, or a designee; and 8 persons appointed by the governor who represent government agencies. The council may create and appoint members to a subcommittee made up of members representing business, organized labor, not-for-profit organizations, government, the legislature and any political subdivision thereof including municipal governments, to solicit input.

(c) The council shall:

- (1) facilitate timely information sharing among state agencies in order to advise or refer matters of potential investigative interest;
- (2) identify those industries and sectors where the underground economy and employee misclassification are most prevalent and target council members’ investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;
- (3) assess existing investigative and enforcement methods, both in the commonwealth and in other jurisdictions, and develop and recommend strategies to improve those methods;
- (4) encourage businesses and individuals to identify violators by soliciting information from the public, facilitating the filing of complaints and enhancing the available mechanisms by which workers can report suspected violations;

## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification Annual Report 2014

- (5) solicit the cooperation and participation of district attorneys and other relevant enforcement agencies, including the insurance fraud bureau, and establish procedures for referring cases to prosecuting authorities as appropriate;
  - (6) work cooperatively with employers, labor and community groups to diminish the size of the underground economy and reduce the number of employee misclassifications by, among other means, disseminating educational materials regarding the applicable laws, including the legal distinctions between independent contractors and employees, and increasing public awareness of the harm caused by the underground economy and employee misclassification;
  - (7) work cooperatively with federal, state and local social services agencies to provide assistance to vulnerable populations that have been exploited by the underground economy and employee misclassification, including, but not limited to, immigrant workers;
  - (8) identify potential regulatory or statutory changes that would strengthen enforcement efforts, including any changes needed to resolve existing legal ambiguities or inconsistencies, as well as potential legal procedures for facilitating individual enforcement efforts; and
  - (9) consult with representatives of business and organized labor, members of the general court, community groups and other agencies to discuss the activities of the council and its members and ways of improving its effectiveness.
- (d) The council shall file an annual report with the governor and the clerks of the house of representatives and senate summarizing the council's activities during the preceding year. The report shall, without limitation: (1) describe the council's efforts and accomplishments during the year; (2) identify any administrative or legal barriers impeding the more effective operation of the council, including any barriers to information sharing or joint action; (3) propose, after consultation with representatives of business and organized labor, members of the general court and other agencies, appropriate administrative, legislative or regulatory changes to strengthen the council's operations and enforcement efforts and reduce or eliminate any barriers to those efforts; and (4) identify successful preventative mechanisms for reducing the extent of the underground economy and employee misclassification, thereby reducing the need for greater enforcement. Reports of the council shall be made available on the web page of the Executive Office of Labor and Workforce Development.

Disclosure of tax information by the Department of Revenue:

SECTION 24. [Section 21 of chapter 62C of the General Laws](#), as appearing in the 2012 Official Edition, is hereby amended by striking out, in lines 158 to 160, inclusive, the words "Joint Enforcement Task Force on the Underground Economy and Employee Misclassification, established by Executive Order 499," and inserting in place thereof the following words:- council on the underground economy established by section 25 of [chapter 23](#).

<https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter144>

## Appendix C: Member Agencies

### Executive Office of Labor and Workforce Development

#### Department of Industrial Accidents (DIA)

The Department of Industrial Accidents administers the law related to the Massachusetts workers' compensation system. This law balances the provision of prompt and fair compensation to workers with occupational injuries and illness arising out of and in the course of employment, with the needs of employers to manage workers' compensation insurance costs. The Department also administers the Workers' Compensation Trust Fund, which provides benefits to injured workers when their employer fails to properly insure or provide these benefits. DIA's investigative unit works to ensure that businesses and industries are in compliance with the workers' compensation statute. One enforcement tool employed by the DIA is the issuance of immediate stop work orders to violators, who are subject to fines and prosecution for failing to provide their employees with workers' compensation benefits.

For more information, visit: [www.mass.gov/dia](http://www.mass.gov/dia).

#### Department of Labor Standards (DLS)

The Department of Labor Standards (DLS) is responsible for the promotion and protection of workers' safety and health, wages and working conditions, and to support employers and workers in the utilization of apprenticeship as a workforce development tool. DLS protects workers by means of education and training, workplace safety and health consultation and assessment, occupational injury and illness data collection and analysis, and consistent and responsible administration of its statutes and regulations. DLS operates the following programs: Division of Apprentice Training, Prevailing Wage Program, Minimum Wage Program, Employment Agency Program, On-site Consultation Program, Asbestos Program, Lead Program, Occupational Lead Poisoning Registry, Massachusetts Workplace Safety and Health Program, Occupational Safety and Health Statistics Program, and Industrial Hygiene Laboratory.

For more information, visit: [www.mass.gov/dols](http://www.mass.gov/dols).

#### Department of Unemployment Assistance (DUA)

The Department of Unemployment Assistance administers the unemployment insurance program in Massachusetts, providing temporary financial assistance to workers who lose their jobs through no fault of their own. Funding for unemployment insurance benefits comes from contributions paid by the state's employers; no deductions are made from workers' salaries. Employers pay quarterly contributions to the Massachusetts DUA. Protecting the integrity of the unemployment insurance program is a responsibility taken seriously by the DUA. Working with Joint Task Force partners, progress is being made in preventing, detecting, investigating, and prosecuting those who defraud or attempt to defraud the unemployment insurance system. This includes employers that evade paying their fair share of unemployment insurance costs by intentionally misclassifying their employees as independent contractors.

For more information, visit: [www.mass.gov/dua](http://www.mass.gov/dua).

## **Office of the Attorney General**

### **Fair Labor Division**

The Office of Attorney General's Fair Labor Division enforces various laws that protect workers, including the prevailing wage, minimum wage, payment of wages, overtime, payroll record keeping, employee misclassification, tip pooling, child labor, Sunday and holiday premium pay laws. The Fair Labor Division also investigates allegations of violation of the State's public bidding laws in order to protect the integrity of the process of awarding public works construction contracts. In addition to prosecuting employers who fail to follow the Commonwealth's wage and hour laws, the Fair Labor Division works to protect employees from being exploited by an employer by educating both employers and employees about the law and employees' rights.

The Attorney General aims to set a level playing field for employers and employees throughout the State. The Attorney General's specific jurisdiction to enforce the Commonwealth's wage and hour laws, both criminally and civilly, as well as its general jurisdiction to enforce criminal laws, including insurance and tax laws, larceny and embezzlement, allows it to take a holistic approach to prosecuting cases involving the underground economy. Its broad jurisdiction enables it to work in partnership with fellow member agencies on the JTF in order to effectively investigate and prosecute cases, as warranted.

For more information, visit: [www.mass.gov/ago](http://www.mass.gov/ago).

## **Executive Office of Administration and Finance**

### **Division of Capital Asset Management and Maintenance (DCAMM)**

The Division of Capital Asset Management and Maintenance (DCAMM) is charged with providing professional and comprehensive services to state agencies in the field of public building design, construction, maintenance, and real estate. DCAMM's scope of services includes planning, design, construction, capital repairs and improvements, asset management, contractor certification and compliance, leasing, acquisition and disposition of real estate, and maintenance. DCAMM serves the JTF by identifying DCAMM-certified contractors who have become non-compliant with other state agencies' regulations or requirements in an effort to bring the contractors back into compliance with state law or to decertify or debar such contractors when appropriate. DCAMM utilizes information obtained from various partner agencies as part of the certification process in order to make a final determination on whether the contractor meets the qualifications to be certified to perform public work.

For more information, visit: [www.mass.gov/dcam](http://www.mass.gov/dcam).

### **Department of Revenue (DOR)**

The mission of the Massachusetts Department of Revenue is to achieve maximum compliance with the tax, child support and municipal finance laws of the Commonwealth. The Department is dedicated to enforcing these laws in a fair, impartial and consistent manner by providing professional and courteous service to all its customers. The Department is also committed to the objectives of the Underground Economy Task Force to enforce employee classification laws through increased public awareness and enforcement. Misclassification of employees by employers has resulted in millions of dollars in lost tax revenue. Both with the Task Force and independently, DOR will be assigning more resources to employee misclassification and other withholding audits.

For more information, visit: [www.mass.gov/dor](http://www.mass.gov/dor).



### Operational Services Division (OSD)

The Operational Services Division (OSD) is the Commonwealth of Massachusetts' central procurement office responsible for establishing Statewide Contracts for goods and services and for the oversight of multiple operational and socioeconomic programs and services, including the:

- Strategic Sourcing Services, which develops and manages statewide procurement objectives and sourcing strategies for implementation across state purchasing, resulting in statewide contracts that provide access to the goods and services state agencies and other public entities need to accomplish their missions. Strategic Sourcing Services also includes the Environmentally Preferable Products (EPP) Procurement Program, with a goal of using the Commonwealth's purchasing power to reduce the environmental and public health impact of state government and foster markets for EPPs.
- Supplier Diversity Office (SDO), which certifies minority, women, disadvantaged and service-disabled, veteran-owned business enterprises, and oversees the Small Business Purchasing Program, Supplier Diversity Program, and Construction Reform Program.
- Surplus Property Program, which is responsible for ensuring that the Commonwealth realizes the maximum benefit from State owned surplus personal property by regulating the manner of disposition of such property to State departments, municipalities, not-for-profit organizations, and the general public.
- COMMBUYS Market Center, which is a state-of-the-art, electronic market center designed to improve online commerce between government purchasers and sellers.
- Special Education Pricing, which is responsible for setting the tuition prices for M.G.L. approved private special education programs for purchase by cities and towns, and Commonwealth departments.
- Non-Profit Purchasing Program, which allows specific Non-Profit entities to purchase commodities and services from Commonwealth Statewide Contractors.
- Commonwealth Print Services, which is a full-service, in-house print shop available to all Executive Branch Agencies, the Legislative Branch, the Judicial Branch, Municipalities, and the general public.
- Office of Vehicle Management (OVM), which has a goal to provide vehicles and related services that offer the best value for Commonwealth Departments.
- OSD Training, Outreach and Marketing offers a variety of free training opportunities for both the buying community (state, municipal and other public entities) and seller community (current contractors and other vendors wishing to do business with the Commonwealth), an Outreach Team that provides organizations with information and training regarding the use of Statewide Contracts and other procurement information and the annual MASSbuys Expo, which brings together vendors on Statewide or Departmental Contracts and attendees from state agencies, cities, towns, schools, and certain non-profits.
- Office of Audit and Quality Assurance has oversight responsibility for: contract compliance, financial reporting and auditing applicable to Human and Social Service contractors pursuant to a Uniform Financial Report (UFR); assisting the Massachusetts Unified Certification Program under the SDO in reviewing Disadvantaged Business Enterprise owner's Personal Net Worth (PNW); conducting Quality Assurance reviews to ensure state departments' comply with procurement regulations; and performing vehicle inspections of state owned and leased vehicles in conformance with OVM's policies and procedures.
- OSD Legal, Policy and Compliance Office, which oversees all legal and policy issues within OSD, including interpreting and ensuring compliance with OSD Statutory Authority, Regulations, Executive Orders, and OSD policies.

For more information, visit: <http://www.mass.gov/osd>.

## **Executive Office of Public Safety and Security**

### **Department of Public Safety (DPS)**

The Department of Public Safety is a licensing and regulatory agency whose mission is to reduce the risk to life and property by promoting safety in the design, construction, installation, inspection, operation, repair and alteration of boilers, pressure vessels, elevators, and buildings. The DPS licenses individuals in many areas, including elevator mechanics, construction supervisor licenses, fireman and engineering licenses, as well as licenses for sprinklerfitters, pipefitters, and refrigeration technicians, and hoisting operators. In order to ensure compliance with the laws of the Commonwealth, the Department is committed to sharing its resources in a cooperative effort with other state agencies to ensure that workers in these industries are not exploited by business owners through misclassification or other means of skirting labor, tax and occupational safety laws.

For more information, visit: [www.mass.gov/eopss](http://www.mass.gov/eopss).

## **Executive Office of Health and Human Services**

### **Massachusetts Office for Refugees and Immigrants (MORI)**

The statutory purpose of the Massachusetts Office for Refugees and Immigrants (MORI) is to promote the full participation of refugees and immigrants as self-sufficient individuals and families in the economic, social and civic life of the Commonwealth. The primary responsibility of the office is to administer the federally funded refugee resettlement program in Massachusetts, which provides assistance to refugees, such as case management, employment services (including English language training), transitional cash and medical assistance, health screening, and foster care for unaccompanied minors. MORI also administers a state-funded citizenship-assistance program to assist legal permanent residents in Massachusetts to become naturalized United States citizens. MORI serves the Task Force in an advisory capacity, attending Task Force meetings upon invitation; and providing information on understanding cultural issues, identifying immigrant community groups to facilitate Task Force outreach, as well as identifying translation resources, upon request.

For more information, visit: [www.mass.gov/ori](http://www.mass.gov/ori).

### **Massachusetts Department of Public Health**

The mission of the Massachusetts Department of Public Health is to prevent illness, injury, and premature death, to assure access to high-quality public health and health care services, and to promote wellness and health equity for all people in the Commonwealth. DPH envisions a Commonwealth in which all people enjoy optimal health. DPH provides programs to address specific diseases and conditions and offer services to address the needs of vulnerable populations. DPH also develops, implements, promotes, and enforces policies to assure that the conditions under which people live are most conducive to health and enable people to make healthy choices for themselves and their families.

For more information, visit: [www.mass.gov/dph](http://www.mass.gov/dph).

## **Executive Office of Housing and Economic Development**

### **Division of Banks (DOB)**

The Division of Banks (DOB) is responsible for ensuring a sound, competitive, and accessible banking and financial services environment in the Commonwealth. DOB is committed to providing effective financial and consumer protection supervision over regulated entities through intra- and inter-agency coordination. Under statute, the DOB is tasked with chartering, licensing, and examining State Chartered Banks, Credit Unions, Trust Companies, Mortgage Brokers, Mortgage Lenders, Mortgage Loan Originators, Check Cashers, Check Sellers, Debt Collectors, Foreign Transmittal Agencies, Insurance Premium Finance Agencies, Motor Vehicle Sales Finance Companies, Retail Installment Finance Companies, and Small Loan Companies.

**For more information, visit:** [www.mass.gov/dob](http://www.mass.gov/dob).

### **Division of Professional Licensure (DPL)**

The Division of Professional Licensure, under the Office of Consumer Affairs and Business Regulation, oversees 30 boards of registration that license and regulate more than 370,000 licensees in some 50 trades and professions. DPL also oversees private occupational schools. DPL's mission is to protect the public health, safety, and welfare by licensing qualified individuals and businesses who provide services to consumers, and by fair enforcement of the statutes and regulations of the boards. Boards can revoke or suspend a license after investigation and adjudication of complaints, and DPL works with participating Joint Task Force agencies to prosecute unlicensed practice cases on behalf of its boards.

**For more information, visit:** [www.mass.gov/dpl](http://www.mass.gov/dpl).

### **Office of Small Business and Entrepreneurship (OSBE)**

The Office of Small Business and Entrepreneurship's mission is to create policies and programs to support small businesses and entrepreneurs across the Commonwealth. OSBE is the most valuable resource for Small Business Community, and utilizes the following business development tools: Small Business Assistance Advisory Council, Technical Assistance Grants and Office, and Small Business Development Centers. OSBE is dedicated to understanding small business needs, providing appropriate programs, and advocating policy to enable growth and job creation.

## **Office of the Treasurer**

### **Alcoholic Beverages Control Commission (ABCC)**

The Alcoholic Beverages Control Commission regulates the alcoholic beverages industry in Massachusetts, directly licensing the statewide activities of liquor manufacturers, transporters, wholesalers, and brokers. The ABCC also regulates interstate and international alcoholic beverage businesses by issuing certificates of compliance. The ABCC investigates applications for licenses, prosecutes violations of pertinent statutes and regulations, and adjudicates disputes among members of the industry.

**For more information, visit:** [www.mass.gov/abcc](http://www.mass.gov/abcc).

## **Office of the Secretary of the Commonwealth**

### **Corporations Division**

The Corporations Division of the Secretary of the Commonwealth William Francis Galvin's Office is the repository for the public records of approximately 200,000 profit and nonprofit corporations and approximately 140,000 limited liability entities organized or registered to transact business in the Commonwealth. All corporations and certain other business entities transacting business in the Commonwealth and organized under the laws of a different state or country are required to file a registration with the Corporations Division. Those foreign corporations or other business entities transacting business in the Commonwealth without filing a registration with the Corporations are subject to several penalties pursuant to Massachusetts General Laws Chapter 156D, Section 15.02. In 2013 the Corporations Division joined the JTF. Since that time the Division has assisted the Task Force by pursuing entities organized under the laws of other states or countries that fail to comply with the laws of the Commonwealth regarding transacting business within Massachusetts.

**For more information, visit:** [www.sec.state.ma.us/cor/](http://www.sec.state.ma.us/cor/).

## **Independent**

### **Massachusetts Commission Against Discrimination (MCAD)**

The Massachusetts Commission Against Discrimination (MCAD) is responsible for enforcement of Massachusetts' anti-discrimination laws, including the Fair Employment, Fair Education and Fair Housing Practices Acts, as well as the Maternity Leave and Public Accommodations laws, on behalf of the public. The Legislature has afforded the Commission with significant and comprehensive power and authority to investigate, conciliate, prosecute and adjudicate claims of discrimination, incident to our primary mandate of protecting, preserving, and enhancing the civil rights of our citizens.

**For more information, visit:** [www.mass.gov/mcad](http://www.mass.gov/mcad).

## Federal Partners

### United States Department of Labor (USDOL)

The mission of the U.S. Department of Labor and its agencies is to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. Several of its agencies are JTF partners:

- The Wage and Hour Division enforces Federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act. It also enforces the Migrant and Seasonal Agricultural Worker Protection Act, the Family and Medical Leave Act, and a number of employment standards and worker protections as provided in several immigration related statutes. Additionally, WHD administers and enforces the prevailing wage requirements of the Davis Bacon Act and the Service Contract Act and other statutes applicable to Federal contracts for construction and for the provision of goods and services.

For more information, visit: [www.dol.gov/whd](http://www.dol.gov/whd).

- Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance, as well as ensuring protections for whistleblowers under OSHA and several other statutes.

For more information, visit: [www.osha.gov](http://www.osha.gov).

- The Office of the Solicitor's mission is to meet the legal service demands of the entire Department of Labor. It fulfills its mission by representing the Secretary of Labor and USDOL agencies in all necessary litigation, including both enforcement actions and defensive litigation, and in alternative dispute resolution activities; by assisting in the development of regulations, standards and legislative proposals; and by providing legal opinions and advice concerning all the Department's activities. The Regional Solicitor's Office for Region 1 is located in Boston, and covers the six New England states.

For more information, visit: [www.dol.gov/sol](http://www.dol.gov/sol).

- The mission of the Employee Benefits Security Administration is to assure the security of the retirement, health and other workplace related benefits of America's workers and their families. It accomplishes this mission by developing effective regulations; assisting and educating workers, plan sponsors, fiduciaries and service providers; and vigorously enforcing the law.

For more information, visit: [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

- The purpose of the Office of Federal Contract Compliance Programs (OFCCP) is to enforce, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government.

For more information, visit: [www.dol.gov/ofccp](http://www.dol.gov/ofccp).

### **National Labor Relations Board (NLRB)**

The National Labor Relations Board is the federal agency that enforces the National Labor Relations Act, a law that applies to most private sector employers. Federal law protects the right of employees to engage in or refrain from protected, concerted activities with other employees in dealing with their employers with respect to wage, benefits, and other terms and conditions of employment. The Agency is most commonly associated with the protection of union activity and enforcing the requirement that where employees have chosen to be represented by a union, that unions and employers engage in good faith collective-bargaining, but the protection of concerted employee action is not limited to union situations. The Act gives substantive legal protection for group employee action seeking to engage employers with respect to their wages, benefits, and other terms and conditions of employment; therefore, it provides important protections to employees engaged in self-help efforts with respect to their employment. Through its intake and public information activities, NLRB personnel frequently encounter individuals who have substantive rights protected by one or more member agencies of the JTF.

**For more information, visit:** [www.nlr.gov](http://www.nlr.gov).

## **Other Partners**

### **Insurance Fraud Bureau (IFB)**

The Insurance Fraud Bureau of Massachusetts (IFB) was authorized by Massachusetts statute in 1990 to criminally investigate suspected fraudulent insurance transactions. The IFB became operational in 1991. The jurisdiction of the IFB was expanded effective January 1, 1992 to specifically include the criminal investigation of workers' compensation fraud, workers' compensation claim fraud, and workers' compensation premium evasion cases presented by misclassification of employees—schemes to affect experience modification or unreported or underreported payroll. Under existing law, anyone who is licensed under Massachusetts General Law (M.G.L.) Chapter 175, exempt from the licensing requirements of M.G.L. c. 175, or otherwise engaged in the business of insurance, and who becomes aware of suspected insurance fraud, is required to report it to the IFB. In addition to incarceration, the restitution orders on workers' compensation premium evasion cases total over \$63 million.

Referrals can be made through the IFB website at [www.ifb.org](http://www.ifb.org) or via the IFB hotline, 1-800-32-FRAUD.

**For more information, visit:** [www.ifb.org](http://www.ifb.org).

# Appendix D: Common Interest Agreement

**COMMON INTEREST AGREEMENT  
BETWEEN  
PARTICIPATING AGENCIES OF THE U.S. DEPARTMENT OF LABOR  
AND**

**THE COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF LABOR AND WORKFORCE  
DEVELOPMENT, JOINT ENFORCEMENT TASK FORCE ON THE UNDERGROUND ECONOMY AND  
EMPLOYEE MISCLASSIFICATION/COUNCIL ON THE UNDERGROUND ECONOMY**

This Agreement is made and entered into by and between participating agencies of the United States Department of Labor, specifically, the Wage and Hour Division, the Employee Benefits Security Administration, the Office of Federal Contract Compliance Programs, and the Occupational Safety and Health Administration (all represented by the Office of the Solicitor and hereinafter collectively referred to as the “Department”), and the Commonwealth of Massachusetts, Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF)<sup>1</sup> through the Secretary of the Executive Office of Labor and Workforce Development (EOLWD). The Department and the Commonwealth are collectively referred to as “the parties.”

With the specific and mutual goals of providing clear, accurate, and easy-to-access compliance information to employers, employees, and other stakeholders, and of sharing resources and enhancing enforcement by, as appropriate, conducting coordinated enforcement actions and sharing information consistent with applicable law, the parties agree to enter into this Agreement.

THEREFORE, IT IS MUTUALLY AGREED

THAT: Purpose

The parties recognize the value of establishing a collaborative relationship to promote compliance with laws of common concern in the Commonwealth of Massachusetts. The parties enter into this Agreement to more effectively and efficiently communicate and cooperate on areas of common interest. This includes, but is not limited to the following: sharing of training materials; providing employers and employees with compliance assistance information; and conducting coordinated law enforcement investigations and sharing information, where appropriate and to the extent allowed by law, to protect the wages, retirement income security, equal employment opportunity, unemployment benefits, workers’ compensation entitlements, safety, and health of America’s workforce, and to ensure a level playing field for law-abiding businesses, and proper compliance with applicable tax and licensing laws.

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<sup>1</sup>In accordance with Chapter 144 of the Acts of 2014 *An Act Restoring the Minimum Wage and Providing Unemployment Insurance Reforms* (M.G.L. Chapter 23 Section 25) on March 25th 2015, the Joint Enforcement Task Force on the Underground Economy and Employee Misclassification will become the Council on the Underground Economy (CUE). The council, chaired by the Secretary of the Executive Office of Labor and Workforce Development and consisting of 17 members, shall coordinate joint efforts to combat the underground economy and employee misclassification, including efforts to: (1) foster compliance with the law by educating business owners and employees about applicable requirements; (2) conduct targeted investigations and enforcement actions against violators; (3) protect the health, safety and benefit rights of workers; and (4) restore competitive equality for law-abiding businesses. For the purposes of this section, the term “underground economy” shall mean any individual or business that deals in cash or uses other means to conceal its true tax liability from government licensing, regulatory and taxing agencies, including, but not limited to, tax evasion or fraud, misclassification of employees, wage theft or the unreported payment of wages. See Appendix B. This agreement extends to the CUE and its named member agencies.



## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

### Annual Report 2014

#### Agency Responsibilities

The Department is responsible for administering and enforcing a wide range of federal labor laws, including the Fair Labor Standards Act, the Family and Medical Leave Act, the Migrant and Seasonal Agricultural Worker Protection Act, worker protections provided in several temporary visa programs, the prevailing wage requirements of the Davis-Bacon and Related Acts, the Service Contract Act, the Employee Retirement Income Security Act, the Occupational Safety and Health Act, numerous whistleblower provisions of federal statutes, Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Nothing in this agreement limits the Department's enforcement of these and other laws.

The Commonwealth is responsible for:

#### Executive Office of Labor and Workforce Development (EOLWD)/Joint Enforcement Task Force on the Underground Economy and Employee Misclassification (JTF)

- EOLWD is responsible for directing and overseeing the work of the Department of Unemployment Assistance, the Department of Industrial Accidents, the Department of Labor Standards, and the Department of Career Services. The Secretary of Labor and Workforce Development serves as the chair of JTF according to Massachusetts Executive Order 499 (E.O. 499).
- The Task Force consists of the following members or their designees: the Director of Labor, the Commissioner of Revenue, the Commissioner of the Department of Industrial Accidents, the Chief of the Attorney General's Fair Labor Division, the Commissioner of the Division of Occupational Safety, the Commissioner of the Department of Public Safety, the Director of the Division of Professional Licensure, the Director of Apprenticeship Training and the Director of the Department of Unemployment Assistance.
- According to E.O. 499, JTF coordinates joint efforts to combat the underground economy and employee misclassification, including efforts to: (a) foster compliance with the law by educating business owners and employees about applicable requirements; (b) conduct joint, targeted investigations and enforcement actions against violators; (c) protect the health, safety and benefit rights of workers; and (d) restore competitive equality for law-abiding businesses.
- According to E.O. 499, in fulfilling its mission, JTF:
  - o Facilitates timely information sharing between and among Task Force members, including through the establishment of protocols by which participating agencies will advise or refer to other agencies matters of potential investigative interest;
  - o Identifies those industries and sectors where the underground economy and employee misclassification are most prevalent and target Task Force members' investigative and enforcement resources against those sectors, including through the formation of joint investigative and enforcement teams;
  - o Assesses existing investigative and enforcement methods, both in Massachusetts and in other jurisdictions, and develops and recommends strategies to improve those methods;
  - o Encourages businesses and individuals to identify violators by soliciting information from the public, facilitating the filing of complaints, and enhancing the available mechanisms by which workers can report suspected violations;

## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification

### Annual Report 2014

- o Solicits the cooperation and participation of district attorneys and other relevant enforcement agencies, including the Insurance Fraud Bureau, and establishes procedures for referring cases to prosecuting authorities as appropriate; Works cooperatively with employers, labor, and community groups to diminish the size of the underground economy and reduce the number of employee misclassifications by, among other means, disseminating educational materials regarding the applicable laws, including the legal distinctions between independent contractors and employees, and increasing public awareness of the harm caused by the underground economy and employee misclassification;
- o Works cooperatively with federal, commonwealth, and local social services agencies to provide assistance to vulnerable populations that have been exploited by the underground economy and employee misclassification, including but not limited to immigrant workers;
- o Identifies potential regulatory or statutory changes that would strengthen enforcement efforts, including any changes needed to resolve existing legal ambiguities or inconsistencies, as well as potential legal procedures for facilitating individual enforcement efforts; and
- o Consults with representatives of business and organized labor, members of the General Court, community groups and other agencies concerning the activities of the Task Force and its members and ways of improving its effectiveness, including consideration of whether to establish an advisory panel under the Secretary of Labor and Workforce Development.

#### Contacts

- Each party will designate a primary contact person, and each agency will also designate a contact person, responsible for coordinating activities covered under this Agreement.
- Each party will designate a representative to meet annually to review areas of mutual concern and the terms and conditions of this Agreement.

#### Enforcement

Where appropriate and to the extent allowable under law,

- Any or all of the parties and/or their participating agencies may conduct coordinated investigations of common interest periodically in the Commonwealth of Massachusetts, as mutually agreed upon.
- The parties and their participating agencies will make reasonable efforts to coordinate their respective enforcement activities and assist each other with enforcement, to the extent practicable.
- The parties and their participating agencies will make referrals of potential violations of each other's laws.

#### Effect of Agreement

- This Agreement does not authorize the expenditure or reimbursement of any funds. Nothing in this Agreement obligates any participating agency to expend appropriations, enter into any other contract, or incur other obligations.
- By entering into this Agreement, the parties do not imply an endorsement or promotion of the policies, programs, or services of the other.
- Nothing in this Agreement is intended to diminish or otherwise affect the authority of any participating agency to implement its respective statutory functions.
- This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or be binding upon the parties. This agreement is not intended to confer any right upon any private person or other third party.

## Joint Enforcement Task Force on the Underground Economy and Employee Misclassification Annual Report 2014

- Nothing in this Agreement will be interpreted as limiting or superseding the participating agencies' normal operations. This agreement also does not limit or restrict the participating agencies from participating in similar activities or other arrangements with other entities.
- This agreement will be executed in full compliance with the Privacy Act of 1974, and any other applicable federal laws and laws of the Commonwealth.

### Exchange of Information

- The Department and the Commonwealth endeavor to cooperate with other government agencies to the fullest extent possible under the law, subject to the general limitations that any such cooperation must be consistent with each party's own statutory obligations and enforcement efforts. It is the parties' view that sharing of information-including certain documents, factual materials, mental impressions, memoranda, interview reports, research, and other information, some of which may be privileged-in cases of common legal interest is to the parties' mutual benefit.
- Exchange of such information pursuant to this Agreement is not a public disclosure under the Freedom of Information Act, 5 U.S.C. 552.
- Information that is otherwise discoverable and not privileged shall not become privileged simply because it was shared between any participating agency of the Department and any participating agency of the Commonwealth.
- Privileged information means information that may be exempt from disclosure to the public or other unauthorized persons under state and/or federal law, or otherwise may properly be withheld from disclosure. Such information may include but is not limited to: the identities of persons who have given information to the parties in confidence or under circumstances in which confidentiality can be implied; any employee statements in any of the participating agencies' enforcement files that were obtained under these conditions; information concerning investigative techniques or procedures that if disclosed could lessen investigative effectiveness; internal opinions and recommendations of federal or state personnel, including (but not limited to) investigators and supervisors; information or records covered by the attorney-client privilege and/or the attorney work-product privilege; personal information on living persons; tax and child support information; individually-identifiable health information; and confidential business information and trade secrets. Any physical material or other document containing such information should be clearly marked "privileged" before it is provided pursuant to this Agreement.
- Confidential Unemployment Compensation (UC) information, as defined in 20 CFR 603 .2(b ), means any unemployment compensation information, as defined in 20 CFR 603 .2G), required to be kept confidential under 20 CFR 603.4 or its successor law or regulation.
- Acknowledging that privileges and protections (including without limitation the investigative-files privilege, informant's privilege, attorney-client privilege, work-product doctrine, deliberative-process privilege, and confidentiality agreements or orders) may apply to certain shared information, the parties wish to pursue their common but separate interests without waiving any privilege or protection that may apply to that shared information.
- When privileged information is shared it shall be used and accessed only by authorized individuals and only for the limited purposes of carrying out activities pursuant to this

- Agreement as described herein. The information shall not be duplicated or further disclosed without the written authorization of the party that provided it, unless the information becomes public without violation of this Agreement or unless the information is required to be disclosed by Common order or other legal authority. The parties shall instruct all such authorized individuals about the confidentiality requirements under both applicable state and federal law and the Common Interest Agreement itself, and about the potential sanctions for unauthorized use, browsing, or disclosure of privileged information.
- In the event that there is a public proceeding, such as a trial, in which privileged information may be used or testimony of either party's employees sought, prompt notice shall be given to the other party to enable it to take such action, if any, that it deems appropriate under the circumstances.
- Subject to applicable requirements of law, the participating agencies shall adhere to the limitations placed on them in any requested dissemination of CJIS/NCIC data to noncriminal justice agencies.
- Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this Agreement, the party receiving such a request or subpoena shall take reasonable measures, including but not limited to asserting the common interest privilege, to preclude or restrict the production of such information, and shall promptly notify the party providing such information that such a request or subpoena has been received, so that the party providing such information may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.
- Neither party shall have authority to waive any applicable privilege or doctrine on behalf of the other party, nor shall any waiver of an applicable privilege or doctrine by the conduct of one party be construed to apply to the other party.
- The requirements of this Agreement, as applied to all privileged information, shall survive all of the following: (a) withdrawal by any participating agency party from this Agreement; (b) termination of this Agreement, (c) final disposition of claims or actions whether by judgment, settlement, or other means of disposition.
- In addition to the requirements above, confidential unemployment compensation information may be exchanged only subject to the confidentiality requirements of 20 CFR 603.4, and any other applicable laws. In addition to the requirements above, the types of confidential information referenced in Appendix A may be exchanged only subject to the corresponding confidentiality requirements included in Appendix A.
- For information security purposes, information (including paper-based documents and electronic information such as emails and CDs) exchanged pursuant to this Agreement remains the responsibility of the donor agency while in transit. The agencies agree to establish a communication protocol for notifying each agency's designated contact person when information is sent to or received from that agency, including information on the form of the transfer and the media type and quantity (when appropriate). An agency expecting to receive information will notify the donor agency if the information is not received as of the next business date following the agreed upon delivery date.
- For information security purposes, after an agency receives information from the donor agency, the donor agency retains no responsibility for any security incidents, inadvertent disclosure, or the physical and information technology safeguards in place for protecting that information by the agency that received it.

- However, in the event that the agency receiving the information experiences a security incident or disaster that results in the suspected or confirmed inadvertent disclosure of the data exchanged pursuant to this Agreement, the agency experiencing the incident or disaster will send formal written notification to the donor agency's designated contact person within 3 days after detection of the incident or disaster. The written notification will describe the security incident or disaster in detail including what data exchanged pursuant to this Agreement may have been inadvertently disclosed.

**Subject to the foregoing constraints:**

- The parties and their participating agencies agree to exchange information on laws and regulations of common concern to the one another, as requested and to the extent practicable and allowable by law and policy.
- The parties and their participating agencies will establish a methodology for exchanging investigative leads, complaints, and referrals of possible violations, to the extent feasible and allowable by law and policy.

The parties and their participating agencies will exchange information (statistical data) on incidence of violations in specific industries and geographic areas, as requested and to the extent practicable and allowable by law and policy.

**Resolution of Disagreements**

- Disputes arising under this Agreement will be resolved informally by discussions between parties' Points of Contact, or other officials designated by a party.

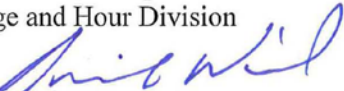
**Period of Agreement**

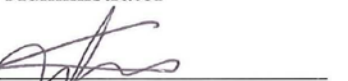
- This Agreement becomes effective upon the signing by all signatories below, and will expire 3 years from the effective date. This Agreement may be modified in writing by mutual consent of all signatories or their designees. Any party or participating agency may withdraw from participation in this Agreement by giving thirty (30) days advance written notice prior to the date of intended withdrawal. Renewal of the Agreement may be accomplished by written agreement of all signatories or their designees.

Joint Enforcement Task Force on the Underground Economy and Employee Misclassification  
Annual Report 2014

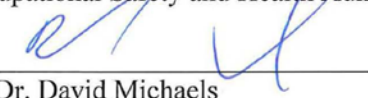
This Agreement is effective as of the 17th day of November 2014.

United States Department of Labor,  
Wage and Hour Division


By:   
Dr. David Weil  
Administrator

By:   
Mark Watson  
Regional Administrator, WHD

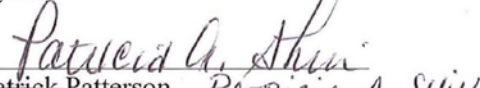
United States Department of Labor  
Occupational Safety and Health Administration

By:   
Dr. David Michaels  
Assistant Secretary

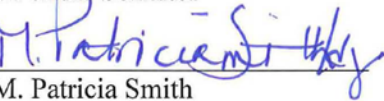
United States Department of Labor  
Employee Benefits Security Administration

By:   
Phyllis C. Borzi  
Assistant Secretary

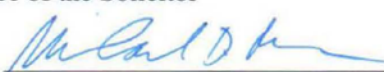
United States Department of Labor  
Office of Federal Contract Compliance  
Programs

By:   
~~Patrick Patterson~~ PATRICIA A. SHIV  
Deputy Director

United States Department of Labor  
Office of the Solicitor

By:   
M. Patricia Smith  
Solicitor of Labor

United States Department of Labor  
Office of the Solicitor

By:   
Michael D. Felsen  
Regional Solicitor

Commonwealth of Massachusetts,  
Joint Enforcement Task Force on the  
Underground Economy and Employee  
Misclassification/Council on the Underground  
Economy

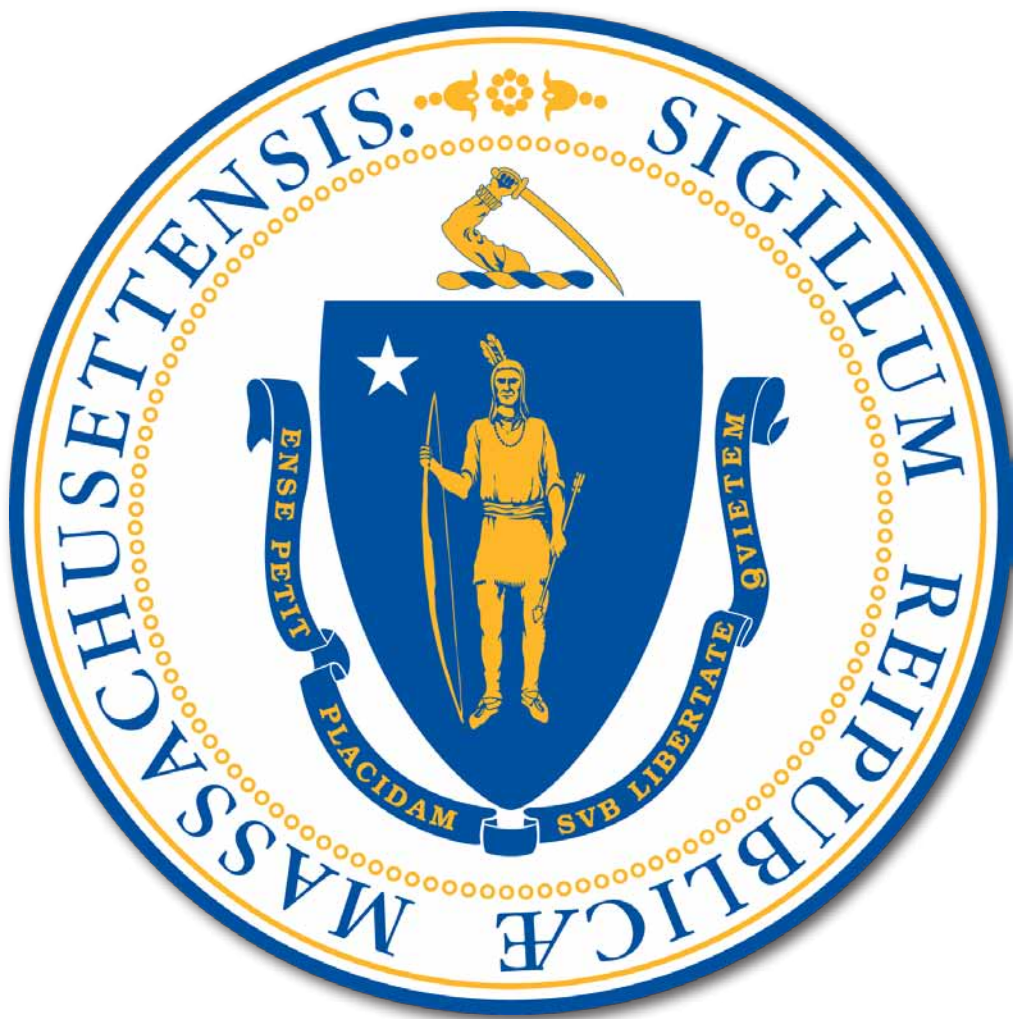
By:   
Rachel Kaprielian  
Secretary, Executive Office of Labor and  
Workforce Development Chair, Joint Task  
Force/Council

**Appendix A**

- In accordance with M.G.L. c. 14, § 6 and DOR's Tax Confidentiality Statutes, M.G.L. c. 62C, §§ 21 and 21B:
  - o Confidential tax information must be safeguarded in accordance with the best practices contained in the National Institute of Standards and Technology (NIST) Special Publication 800-53 Revision 2, "Security Controls for Federal Information Systems", Annex 2, "Moderate-Impact Baseline" (NIST 800-53 (Moderate Level)) (this document can be found at: <http://csrc.nist.gov/publications/PubsSPs.html>) regarding the physical and technical security of the DOR Information.
  - o Confidential tax information in all files or systems must be maintained only for as long as it is relevant or useful for the purposes of this Agreement or until termination of this Agreement. The best practices contained in the NIST 800-88 Standard regarding the destruction of electronic or paper media and magnetic tapes; applicable state and federal statutes and regulations, including G.L. c. 93I; and the Massachusetts Statewide Records Retention Schedule must be followed.
  - o Any person having access to the tax information must be informed of DOR's confidentiality requirements and the sanctions for unauthorized disclosure and sign DOR's confidentiality acknowledgement.
  - o Access to confidential information may not be released to any third party without DOR's written approval.
  - o DOR reserves the right to periodically review the use of the confidential tax information, including on-site audits and inspections, to reasonably determine and verify that the confidentiality of the DOR Information is maintained in accordance with the terms of this Agreement, and that the information is used only for authorized purposes.
  - o DOR may discontinue or suspend the provision of the tax information immediately if it determines that any term of this Agreement has been violated.
- In accordance with M.G.L. c.151:
  - o Privileged unemployment tax information shall be stored in a place physically secure from access by unauthorized persons.
  - o Privileged unemployment tax information maintained in electronic format must be stored so that unauthorized persons cannot obtain the information by any means.
  - o Privileged unemployment tax information shall be returned to the agency providing the information when no longer needed for the purposes of this Agreement or upon termination of this Agreement.
  - o Prior to accessing privileged unemployment tax information, parties shall agree to: (1) instruct all personnel having access to the privileged unemployment tax information about confidentiality requirements and the sanctions for unauthorized disclosure, (2) sign an acknowledgement that all personnel having access to the privileged unemployment tax information have been so instructed, and (3) allow with reasonable notice on-site inspections by the party providing the privileged unemployment tax information.

In accordance with M.G.L. c.93H, agencies shall safeguard personal information of residents of the Commonwealth.





**1-877-96-LABOR**  
**[www.mass.gov/lwd/jtf](http://www.mass.gov/lwd/jtf)**

**COMMONWEALTH OF MASSACHUSETTS  
JOINT TASK FORCE ON THE UNDERGROUND ECONOMY  
AND EMPLOYEE MISCLASSIFICATION**